

**SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE**



The Amistad boat a year ago in December, after been worked upon with Adobe Photoshop software

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office

as at:

Wednesday, 21 January 2009

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
Martin Royston-Wright
Ext 7217

Local News

Taylor Defence Team Says He Had No Vendetta against.../ *Independent Observer* Page 3

International News

Witness Tariq Malik Concludes His Testimony / *Charlestaylortrial.org* Pages 4-5

UNMIL Public Information Office Complete Media Summaries / *UNMIL* Pages 6-7

Lofa Rep Frowns at TRC Report / *Star Radio* Page 8

Rwandan Minister Incited Genocide / *BBC Online* Page 9

...Creation of a Specific Code of Procedure for International Criminal Courts / *Ka-set* Pages 10-12

'Smart Power' and the Rule of Law / *The Jurist* Pages 13-14

Independent Observer
Wednesday, 21 January 2009

Taylor Defence Team says He Had No Vendetta Against Mandingos

*Written by Mariama Khai
Fornah in the Hague*

The Court resumed Monday morning in The Hague with the new Presiding Judge, Richard Lussick. After the formal opening of the Court, the Liberian journalist Hassan Bility, who has been on the witness stand for one week, ended his cross examination. The Defense team of Charles Taylor said their client had no personal vendetta for the Mandingos in Liberia. Defense lawyer Courtenay Griffiths said Mr Taylor demonstrated his love for the Mandingos by sponsoring Muslim pilgrims to Saudi Arabia.

FORNAH: Lead Defense Lawyer, Courtenay Griffiths has told the Judges that Charles Taylor had no bitterness against the Mandingo ethnic group in Liberia. He said Mr. Bility was not arrested because of his ethnicity as a Mandingo.

Mr. Griffiths made reference to Mr. Taylor's marriage to a Mandingo woman as an evidence of the former Liberian president's love for the Mandingos.

Lead counsel said his client Mr. Taylor also employed members of the Mandingo ethnic group into his government.

BILITY: It is my position that President Charles Taylor and his government also viewed Mandingos and Krahn's with some high level of suspicion.

GRIFFITHS: So your position is he was anti-Mandingo?

BILITY: I believe he was very suspicious of Mandingos.

GRIFFITHS: Is it not also right that there were many Mandingos in his government?

BILITY: There were Mandingos in his government.

GRIFFITHS: One of them being your uncle, Musa

Sesay.

BILITY: Yes sir, counsel.

GRIFFITHS: And also, is it not right that Mr. Taylor a traditional wife who was a Mandingo by the name of [Fatimata]?

BILITY: I'm not sure if there was an official wedding, but he did have a female associate with him referred to as his wife and called Mrs. [Hadjia Fatimata] Taylor.

GRIFFITHS: And was she a Mandingo?

BILITY: Yes sir.

GRIFFITHS: Is it not also right that Mr. Taylor annually sponsored up to 200 Muslims to attend the Hajj to Mecca?

BILITY: Yes.

GRIFFITHS: And for the most part, those that benefited from that government largesse were Mandingos, weren't they?

BILITY: Yes sir.

FORNAH: Mr. Bility concluded his testimony by saying Mr. Taylor's pronouncement about press freedom in Liberia was completely different from actions taken against journalists who were critical of the government. However the Prosecutor, Stephen Rapp, has taken on the next witness who is the Chief of Evidence and Archive at the Special Court for Sierra Leone.

Mr. Tariq Malik, a Pakistani national, has been answering questions about evidence gathered from the home of former RUF leader Foday Sankoh in Freetown.

The document shows a series of information ranging from communication to transportation of arms and ammunition. Mr. Malik identified in court the documents that showed different communication evidence exchanged between the rank and files of the RUF, AFRC.

The Prosecution witness Malik also identified docu-

mentary evidence that existed between the former RUF Foday Sankoh, Mr. Charles Taylor and AFRC Chairman Johnny Paul Koroma in 1997.

Mr. Malik, the Evidence and Archive Chief of the Special Court for Sierra Leone, testified to some eleven sets of documents seized from Charles Taylor's White Flower. The witness said the documents were found during a search on March 5, 2004 by Liberian officials on the request of the Prosecutor of the Special Court. The Prosecutor, Stephen Rapp, asked the witness to identify the documents seized from Mr. Taylor's residence in Monrovia.

MALIK: One called "Documents relating to civil war in Liberia. Another would be Charles Taylor's external activities.

RAPP: Witness, talking about these that relate to the civil war in Liberia, what did these documents look...

MALIK: First one, it says Salute Report from General Warning, I think dated 1994. It's addressed to Charles Taylor. Second documents is ATU - that is Anti-Terrorist Unit report called Deployment. It is addressed to Charles Taylor Junior as commander, I believe. The third report, third document, it's a hand-written paper which appears to deal with immunity for actions or crimes committed during the civil war in Liberia from 1989 to August 2003.

FORNAH: At the same the Defense team told the court that Mr. Taylor would not attend the Court hearing on Friday, January 23. No reason was given, but lead Defense lawyer, Courtenay Griffiths said the former Liberian leader has given his consent for the trial to go ahead in his absence.

For the BBC World Service Trust, this is Mariama Khai Fornah reporting from The Hague.

Charlestaylortrial.org

Tuesday 20 January 2009

Afternoon Session: Witness Tariq Malik Concludes His Testimony

3:00pm: Court resumed and defence counsel Terry Munyard concluded the cross-examination of witness Tariq Maliq. Chief Prosecutor Steven Rapp re-examined the witness and Justice Julia Sebutinde also had a few questions for the witness.

Cross-Examination

Defence counsel Terry Munyard continued the cross-examination of witness Tariq Maliq. Counsel sought to clarify certain issues relating to documents identified by the witness. Counsel asked the witness about documents retrieved from the Justice and Peace Commission in Liberia. Counsel asked the witness whether he has knowledge of the Justice and Peace Commission keeping copies of every newspaper published in Liberia and the witness said he cannot tell whether that was the case. When asked whether its possible that Ms. Ruth Mary Hackler could have obtained more newspapers from the Justice and Peace Commission than might not have been provided to him, the witness responded that he believed that to be the case. Counsel referenced the newspaper article about NPFL on the rampage against the Liberian Peace Council, another armed group and the witness agreed with counsel that there was no reference to Sierra Leone in the article. Counsel also referenced the a second newspaper article that reported an ambush of civilians fleeing from Bichanan, where 3 civilians were killed and several others abducted. The witness agreed with counsel that this was a result of a clash between NPFL and LPC and that there was no reference to the war in Sierra Leone. Counsel read another newspaper article about Armed Forces of Liberia (AFL) members captured in Sierra Leone. In the said article, the writer calls the AFRC the African Revolution Council. Counsel asked the witness whether he noted that the writer could not write well about the AFRC and the witness agreed with counsel. The article states that the AFL soldiers were fighting against the Kamajors in eastern Sierra Leone. When asked whether he knew that Liberian soldiers were fighting for the Sierra Leone army under General Bropleh in the 1990s, the witness said he did not know about that.

Counsel asked the witness whether he normally keeps originals of exhibits that are submitted to him as evidence. The witness responded that it would depend on the person submitting the evidence. He said that some witnesses prefer to just give photocopies to the OTP while keeping the original copies for themselves. He said that in an ideal situation, he normally tries to keep an original copy. Counsel asked the witness about the list of ATU soldiers that were reportedly killed as identified to by prosecution witness Jabati Jaward. Counsel asked the witness whether he could tell where the original source of the evidence was. The witness responded that the evidence was processed by the Evidence Unit but cannot say from the top of his head what the original source was. He said that it is quite possible that information might be in his data base. He said once he checks his data base, he will be happy to provide the information to the court. He explained that stringent rules are applied by the evidence unit to record the source of every evidence that they receive as well as the signature of the person receiving it. He said that some circumstances, however, require exception when the source of the information is impossible to obtain. He said this situation is not unique to the Special Court but applies to all other institutions. He therefore reiterated that there are some documents in his possession for which the source remains unknown. Counsel suggested to the witness that in situations like that, one might not rule out the possibility of forgery.

Counsel asked the witness about a photograph that was shown and identified by a witness who previously testified with protective measures. The photograph depicted a hacked deadbody. The witness who testified

about it said he had carried it with him for several months while fighting with the RUF, before giving it to Alfred Sesay who photocopied it and handed the original back to the witness. Counsel asked the witness why his office had not kept the original photograph. The witness explained that the situation was a typical case of what the person providing the evidence wants to do. He said he cannot say exactly why Alfred Sesay had not kept the original.

That was the end of the cross-examination of the witness. Chief Prosecutor Steven Rapp re-examined the witness.

Re-Examination

Prosecution counsel asked the witness about his role in receiving and identifying the corpse of Sam Bockarie. He explained that Bockarie's DNA samples were drawn by the pathologist who performed the autopsy and handed it to the witness. He reaffirmed that the samples proved that the corpse was that of Sam Bockarie.

Counsel also asked the witness about the 14 documents that he got from Ms. Caldwell. The witness explained that among those 14 documents were two log books, which were assigned ERN numbers and the letter sent to Taylor that Johnny Paul Koroma's wife wanted to bid him farewell.

Questions from Judges

Justice Julia Sebutinde also had a few questions for the witness. Justice Sebutinde asked the witness whether he saw an inventory of the documents obtained after the search of the RUF office in Kono. The witness said he did not see any such inventory. Justice Sebutinde also asked the witness whether he saw an inventory of the documents that were handed over to Joseph Wolczynski. The witness said he did not see any inventory personally but that the OTP created a log of those documents that were retrieved but since the log was not part of any evidence, it was not handed over to him. Justice Sebutinde further asked the witness whether there was any inventory of the documents retrieved from the Justice and Peace Commission by Ruth Mary Hackler. The witness said he did not know of any inventory in that regard. As regards the documents retrieved from the search of Taylor's house and office, the witness said no inventory for documents retrieved was given. He said that the OTP had made several efforts to get the inventory, even seeking legal means in court but that has not been successful.

There were no questions arising from the judge's questions.

Chief Prosecutor Steven Rapp sought to tender some documents for identification. Some legal arguments were heard about the admissibility of said documents and the judges ruled that parties will be heard through motions before any decision is made on the admissibility of the said documents. Presiding Judge Richard Lussick therefore told the prosecutor to submit the documents at a latter date when all parties are heard and a ruling is rendered. That brought the witness's testimony to an end.

Prosecution counsel informed the court that the next witness, who will commence his testimony tomorrow Wednesday January 21, 2009 will be TF1-168 and he will testify completely in closed session. Court adjourned for the day.


United Nations **Nations Unies**

United Nations Mission in Liberia (UNMIL)

UNMIL Public Information Office Complete Media Summaries
20 January 2009

[The media summaries and press clips do not necessarily represent the views of UNMIL.]

Newspaper Summary

Obama to be Sworn in as America's First Black President

(The Analyst The News, Daily Observer, New Democrat, Heritage, Heritage,)

- A good amount of local media coverage was devoted to the excitement sweeping across Liberia, and Africa as Barack Hussein Obama grasps the reins of power today as America's first black president amid grave economic worries and high expectations. News articles as well as public sentiments in various dailies suggest that many Liberians viewed Obama's presidency as one that raises immense hope for most Liberians in view of the perception that their country will be among democratic African nations competing for Obama's attention for increased aid from the United States.
- Yet, most Liberians think Obama's election as the first African-American president is a racial barrier-breaking achievement believed impossible by generations of minorities. The Liberian Government appears confident of continuous US assistance, saying the country enjoys bi-partisan support from America and is confident that the policies remained unchanged on Liberia.
- Despite the euphoria, some analysts think Liberians and other Africans should not expect any drastic change because of Obama's African connection. They believe that Americans will expect Obama to protect their interests first and foremost and that there's nothing much a president who inherits two wars and a deepening economic crisis can do to really usher in an era of hope for the world's poorest continent. Though not reported in the local media, there are speculations in street corners in Monrovia that an Obama administration would allow Africans to get 'free' visas to the U.S.

Radio Summary

Local Media – Radio Veritas *(News monitored today at 9:45 am)*

Ministry of Health Begins Fumigating Infested Town

- The Ministry of Health and Social Welfare says it has begun spraying insecticides in villages recently invaded by a swarm of army worms in Bong County.
- Health Authorities said the ministry is working along with the Agriculture Ministry to contain the incident.
- Over the weekend, government declared a national emergency in Zota District, Bong County, following the invasion of the area by army worms and said nineteen towns and villages had been affected.
- According to Agriculture Minister, Dr. Chris Toe, the worm-like caterpillars are consuming all vegetations in their path and polluting creeks and running water with their faeces.

(Also reported on Star Radio, Sky F.M., Truth F.M. and ELBC)

Three International Group Pledge Support to Conduct of River Gee Bi-Election

- Three international organizations have pledged support to the National Elections Commission to conduct senatorial by election in River Gee County.
- Speaking in separate remarks during the launch of the voters' education campaign, The International Foundation for Election Systems, National Democratic Institute (NDI) and the UNDP urged the electorates to make informed decision while admonishing the candidates to carry out a peaceful and violent-free political campaign.

(Also reported on Star Radio, Sky F.M., Truth F.M. and ELBC)

Police Team Off To Kakata to Investigate Death of Unidentified Woman

- [Sic:] The Liberia National Police has dispatched a team of investigators to Kakata, Margibi County probe into the murder of an unidentified woman.
- Correspondents say the police have invited 10 persons who are assisting with the investigations.
- Reports say the body with parts extracted was discovered on Sunday.
- There has been no official confirmation of the report by police authorities.

Star Radio *(News monitored today at 9:00 am)*

President Sirleaf to be absent from U.S. President Elect Inauguration

- Making the disclosure yesterday, Presidential spokesman, Cyrus Badio said President Ellen Johnson Sirleaf will not be attending the inauguration of U.S. President-Elect Barack Obama based on an anticipated high turn-out at the event.
- Mr. Badio said as a result of this, the Obama inaugural committee had encouraged foreign dignitaries to designate their ambassadors already in Washington to represent them at the occasion
- Meanwhile, Mr. Badio disclosed that the President is among world leaders listed to meet with the new American President, Barack Obama in Washington, D.C., the United States. Details surrounding the meeting between the Liberian President and President Obama are to be concluded by relevant authorities of the two countries.

Star Radio

Tuesday, 20 January 2009

Lofa Rep frowns at TRC Report

Written by Julius Kanubah

A Lofa County Representative says the recommendation by the TRC for a Special Court in Liberia is not healthy.

Representative Maliam Jaleibah said the recommendation has the propensity to plunge Liberia into violence.

According to her prosecuting people bearing the greatest responsibility for the war means the TRC is bringing alligator to suffer Liberians.

Representative Jaleibah said the TRC must design a strategy to reconcile Liberians from county to county.

The Lofa County lawmaker said the Legislature must reject the recommendation by the TRC as the Commission itself is divided.

She said statements by four TRC Commissioners that they are not aware of the confidential report speak to the fact that it has problem.

BBC Online

Tuesday, 20 January 2009

Rwandan minister incited genocide

Former Rwandan Justice Minister Agnes Ntamabyariro has been jailed for life for her part in the 1994 genocide.

A court in the capital Kigali convicted her of conspiracy to plan the slaughter and delivering speeches inciting people to take part.

Mrs Ntamabyariro, arrested in Zambia in 1997, is the only member of the ex-government to be tried in Rwanda.

Others have faced trial at the International Tribunal for Rwanda (ICTR) in the Tanzanian city of Arusha.

Born to a Hutu father and a Tutsi mother, she had appeared at the ICTR in 2006 in defence of another former minister.

Some 800,000 Tutsis and moderate Hutus were killed in the 100-day slaughter.



Some 800,000 people were killed in Rwanda's genocide

Ka-set

Tuesday, 20 JANUARY 2009

<http://cambodia.ka-set.info/khmer-rouge/news-khmer-rouge-tribunal>

The long road towards the creation of a specific code of procedure for international criminal courts

By Stéphanie Gée

Kambol (Cambodia, Phnom Penh). 11/11/2008. Mock trial organised by the ECCC Defence Support Section (DSS) for Law students
© John Vink/ Magnum

A man called Jean-Jacques Gandini, an associate professor in French Literature, found himself standing before the Khmer Rouge Tribunal on November 26th last year, and was asked to answer for his verbal assault of public officials in the course of their duty... A much incongruous trial, held in premises intended for the hearings of senior leaders and criminals of Pol Pot's regime. The mock trial, performed by lawyers from the Montpellier Bar Human Rights Institute (in the South of France) was used as a test-trial, which turned out to be successful, to check the functionality of courtroom technical equipment but most importantly, to give an example of the French legal system, based on Romano-Germanic Law (Civil Law), but also of the Cambodian system which prevails within the Extraordinary Chambers in the Courts of Cambodia (ECCC), right beside International Law, elaborated on the basis of the Anglo-Saxon system (Common Law). Two legal systems, a single court... quite a headache for whoever deals with the mix.

A mock trial meant to throw light on many an issue

The Gandini case is based on a real trial, conducted under the principles of Criminal Law, and was examined by the Montpellier Criminal Chamber a few years ago, in which the Defence lawyer was actually François Roux, the French co-Lawyer for Duch, the former director of the S-21 torture centre, first on the list of the Khmer Rouge trials before the ECCC. However, the rules of French Law for the case procedure were slightly bent - and authorised - for the occasion so as to add to the impact of the trial within the ECCC: a "protected" witness was thus added, and his/her identity was concealed and protected. The French lawyers, who are none other than François Roux's colleagues from the same Bar, happily stood in the shoes of the different parties present at the trial.

The case: Events happened in the defendant's hometown, in the evening - to justify his intervention as the police proceeded to what he thought was an unfairly tough way of taking people in for questioning, a professor, speaking with composure and poise, pleads the state of lawful rebellion on the part of a citizen. He denies the charges pressed against him by three policemen, alleging he hurled insults at them. The defendant is discharged. In a matter of seconds, the "actors" left their part and went back to sit among the audience, mainly composed of Cambodian Law students and ECCC personnel. After the practical demonstration, the debate was opened. The aim, as explained, is not to "give a lesson" but to "take part in a common reflection": how can different legal systems possibly work together?" Between Civil and Common Law, "the one is just as good as the other", and the ECCC, basing its fundamental system on both, must therefore "invent something together".

"See what works best"

The initiative was launched by the ECCC Defence Support Section (DSS), led by its acting head Richard Rogers. The hybrid court, established in Phnom Penh, has now been operating since 2006 but the union of the two legal systems still raises questions on both sides.

“The new Criminal Procedure Code of Cambodia (CPC) came into force in the country during the summer 2007 and is based on the French Penal Code. This gave rise to the idea of a mock trial organised along the lines of Civil Law”, Richard Rogers explains, pointing out that several elements of International Law, like the protection of witnesses, will be added to Civil Law in the ECCC. For him, “there is no fight” between those guided by Civil Law principles and those rather based on the Common Law system, but just a group of people “coming from different backgrounds, who think together to see what works best for serious cases coming under the responsibility of an International Criminal Court, within Cambodian context”.

Combining systems with a view to reduce trial length

“Many of the Common Law jurists who came here do not know the Civil Law system. Some see it positively while others approach it with more stiffness. This is why we thought about holding a criminal trial along the lines of Civil Law”, François Roux says. “There are Codes, rules, which allow everyone to express themselves according to different Common Law procedures but which also tend to reach the same result in the end, i.e. the manifestation of truth - this is what we are seeking - and therefore of justice. I still fundamentally believe that differences are not that major...”

The French co-Lawyer for Duch reckons that “International Criminal justice deserves trials to be held “within a reasonable amount of time”. “Here, we have the opportunity to test a system other than what is followed by other International Criminal Courts, so let's test it! In the end, we will obviously see whether it is better, not better, or worse! But if we notice that with that adaptation of both systems, we really do improve the length of these trials, then I think everyone will come off better.” The hard challenge, he continues, lies in “the way that we, today, can build up a new international Criminal Law system to allow trials to be held within reasonable periods of time, and trials which civil parties will attend and take part in, trials in which the defendant – and this is my wish here – will always be allowed to speak last”.

Does Cambodian procedure have to have the last word?

In the Preamble to the **Internal Rules**, the ECCC indeed explain that the purpose of the document is “to consolidate applicable Cambodian procedure for proceedings before the ECCC and [...] to adopt additional rules where these existing procedures do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application, or if there is a question regarding their consistency with international standards”. However, in practice, this calls for several interpretations. On many occasions, during Pre-Trial Chamber hearings, parties disagreed on the question as to whether the court should be guided by Cambodian procedure or rather refer to the ECCC Internal Rules.

Thus, on February 25th 2008, the Defence Team for Nuon Chea appealed against the Order refusing the Request for Annulment by the Office of the co-Investigating Judges (OCIJ), claiming that Cambodian procedure, i.e. the Criminal Procedure Code of Cambodia (CPC) had priority in this case. Co-Lawyers for the civil parties then decided to deal with the issue by supporting, in form rather than substance, the argument of the Defence. They called the pre-Trial Chamber to reconsider its decision dated August 28th 2008 regarding the relationship between the Internal Rules and the CPC, and stated that the latter must constitute the primary instrument in the proceedings, before the Internal Rules.

Indeed, the pre-Trial Chamber (PTC), emphasising the exceptional context of the ECCC, asserted that the Internal Rules constituted “the primary instrument to which reference should be made in determining procedures before the ECCC where there is a difference between the procedures in the Internal Rules and the Criminal Procedure Code”. The PTC then considered that “the provisions of the CPC should only apply where a question arises which is not addressed by the Internal Rules”. It is true that at the time of the adoption of the Internal Rules in June 2007, the CPC was not effective yet – it came into force in August 2007 – but, as pointed out by lawyers for civil parties, “the draft of the CPC, which was very similar to the ultimately enacted law, was already available”. They added that the CPC had already been adopted by the National Assembly during the June 2007 plenary session.

Legitimacy of the ECCC Internal Rules called into question

Silke Studzinsky, the German lawyer for the civil parties at the ECCC, claims that the Criminal Procedure Code of Cambodia should be implemented in accordance with the Agreement between the United Nations and Cambodia, and with the **ECCC Law** and quotes Article 33 (new) of the Law on the establishment of the ECCC: “If the existing procedures do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application or if there is a question regarding their consistency with international standard, guidance may be sought in procedural rules established at the international level”. By emphasising this aspect, Silke Studzinsky questions the legitimacy of the Internal Rules, drafted by her judiciary personnel during the plenary session(*), which, she points out, was not subjected to any vote at the National Assembly of Cambodia. Thus, she suggests the question of hierarchy of rules and rights within the hybrid court be closely looked at again.

“The plenary session has no authority over the adoption of the Internal Rules which represent an independent system of legal procedure. However, in Cambodia, the National Assembly alone holds legislative power. Neither the Agreement establishing the ECCC nor the ECCC law delegate such legislative power to the plenary session. Even if the Internal Rules are valid, they come under the Criminal Procedure Code of Cambodia”, the lawyer details, reminding that practices are much different in International courts like the ones in Rwanda, Sierra Leone or former Yugoslavia, where a provision was created to allow judges to adopt their own procedural rules.

“Therefore, we expect judges to be creative”, Silke Studzinsky says, “since it is the first time they have to deal with so many victims. The solution, however, is not to restrict their rights by giving the Internal Rules priority over the Criminal Procedure Code, but to enforce them. This might serve as a pattern for future international courts.”

The debate over the hierarchy of procedures was already held by other international UN courts and might appear before the future Special Tribunal for Lebanon, due to start works on March 1st. The tribunal was also formed following a hybrid pattern applied to a country, in this case Lebanon, in which the legal tradition is that of French Law. After fifteen years and the creation of international jurisdictions, the international criminal justice system is still feeling its way along a winding path and trying to elaborate a code of procedure that would be specific to this type of crimes. But for the time being, these courts have not yet found a solution to organise trials within “a reasonable amount of time”...

** Participants at the plenary session: co-Investigating Judges, Judges of the Chambers, co-Prosecutors, the director of the Defence Support Section, head of the Victims Unit, head and deputy head of the ECCC Office of Administration. However, as stipulated in Rule 18 (3b) of the Internal Rules, only the co-Investigating Judges and Judges of the Chambers are entitled to vote on the rules contained in Chapter III (Rule 21 to 114) regarding the procedure.*

The Jurist

Tuesday, 20 January 2009

'Smart Power' and the Rule of Law

JURIST Contributing Editor David Crane of Syracuse University College of Law, former Chief Prosecutor for the UN Special Court for Sierra Leone, says that following a period when the United States on the world stage was like a blinded giant swinging a bludgeon in all directions with little thought, it is high time for the American exercise of "smart power" in keeping with the rule of law...



Smart power is, well, smart. Taking from a West African proverb, Theodore Roosevelt spoke these words at the turn of the last century and perhaps the new administration of Barack Obama a century later appears to be paying head to the words of the proverb, for now. The recent confirmation hearing of Hillary Clinton to be the next Secretary of State was our first official glimpse of the Obama administration's basic approach to diplomacy and it struck the right tone indeed.

It is a secure nation that uses its military power sparingly and with care. Nations that react with armed force as a first resort show their insecurity and place in the world. Over the past seven years or so this nation has been like a blinded giant swinging a bludgeon in all directions with little thought, other than apparently to let the international community, and would be terrorists, know we have a great deal of military power and can use it. The so-called "global war on terror" has been a joke and made this once proud and considerate nation the laughing stock of the world.

This country once governed itself based on the rule of law and approached the international community with that basic fundamental premise in mind. For this we were respected. As an example of this, nations from around the world sent members of their armed forces to learn about the laws of armed conflict in our service schools, knowing that they were getting the best training in the world in the rule of law on the battlefield.

Then the rules changed. The Bush administration declared that the very system with which we used force under the rule of law was "quaint" and "outdated". Declaring that the rules had changed, this nation went on a legal and moral rampage after September 11, 2001. Torture, secret camps, inhumane treatment, and domestic surveillance of US citizens without legal review became common place. The world recoiled in horror. This was "dumb power" and essentially in violation of international and domestic law.

The signal sent at the confirmation hearing of Senator Clinton on January 13, 2009 was a message that such ham-fisted policies would become a thing of the past. Senator Clinton declared: "I believe

that American leadership has been wanting, but is still wanted. We must use what has been called “smart power”, the full range of tools at our disposal—diplomatic, economic, military, political, legal, and cultural—picking the right tool, or combination of tools, for each situation”.

America is still wanted, but an America that wears the values of freedom, democratic ideals, and the rule of law on its sleeve. Use of armed force is never the first solution absent surprise and in self defense. Reprisal is a legal reaction, but it is an exception to what the United Nations Charter declares that we solve our disputes peacefully. The world knows our military strength, but the world needs to once again appreciate our greatest strength and that is the moral strength enshrined in our Constitution.

Smart power in the beginning of the 21st Century is mandated for this nation. Where the rules have changed are the real threats that face all mankind, threats far greater than any one nation can face, such as global warming, failing states and economies, food and water distribution, international criminal actors, among others. Smart power is a realistic balance of national strength and international reality.

Smart power will make this nation safer as we no longer become a threat to the world, a bully pouting after a blackened eye, but a nation of calm and reasoned strength. Shooting first and asking questions later may work in Texas but that is not the world of today. The true measure of mankind should be in the strength of a hand shake. Smart power appears to be a cornerstone to our new foreign policy led by a new President and Secretary of State who understand this point.

As Senator Clinton declared: “Diplomacy is hard work; but when we work hard, diplomacy can work, and not just to defuse tensions, but to achieve results that advance our security, interests and values.” Smart.

David M. Crane is a professor at Syracuse University College of Law, and founding Chief Prosecutor for the UN Special Court for Sierra Leone (2002-2005).