

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



**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:**

Monday, 17 September 2012

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

**International News**

Resolution 2065 (2012) / <i>UN Security Council</i>	Page 3
Despite Claims, ICC Prosecution of Bush, Blair Would Be Illegal / <i>The Jurist</i>	Pages 4-5
Khmer Rouge 'First Lady' Ruled Mentally Unfit to Stand Trial / <i>The Guardian</i>	Pages 6-7

# UN Security Council

Wednesday, 12 September 2012

## **Resolution 2065 (2012) (Excerpt)**

-SNIP-

*Reiterating* its appreciation for the work of the Special Court for Sierra Leone, *welcoming* the verdict in the trial of Charles Taylor and taking note of the proposed appeals, *calling upon* Member States to contribute generously to the Court and to the implementation of the Residual Special Court for Sierra Leone Agreement,

-SNIP-

## The Jurist

Thursday, 13 September 2012

### Despite Claims, ICC Prosecution of Bush, Blair Would Be Illegal

JURIST Guest Columnist Jesse Oppenheim, Brooklyn Law School Class of 2013, offers legal context to Archbishop Desmond Tutu's recent opinion in *The Observer*...

On August 28, word leaked out that Archbishop Desmond Tutu had pulled out of an international summit in South Africa because he refused to share a platform with the "morally indefensible" former UK Prime Minister Tony Blair. Days later, Tutu published an opinion article in *The Observer* explaining his position. The Iraq war "has destabilized and polarized the world to a greater extent than any other conflict in history," wrote Tutu, who was awarded the Nobel Peace Prize in 1984 and the Presidential Medal of Freedom in 2009. Tutu also commented that "in a consistent world, those responsible for this suffering and loss of life should be treading the same path as some of their African and Asian peers who have been made to answer for their actions in the Hague." Despite the qualifier that we do not, in fact, live in a more consistent world, many have interpreted Tutu's words as calling for the International Criminal Court (ICC) to arrest and try former US President George W. Bush and Blair for leading the invasion of Iraq. Such an interpretation of Tutu's comments indicates a fundamental misunderstanding about the reach and laws of the ICC; bringing such charges would likely be illegal.

First, it is unclear what crimes would be brought against Bush and Blair. Presumably, advocates for such an indictment would seek to charge Bush and Blair for the crime of aggression in a manner similar to the Tokyo War Crimes Tribunal of 1946. However, the Rome Statute, which grants the ICC its powers, currently lacks a codified crime of aggression despite the 2010 Kampala Review Conference's consensus adoption of such a definition — only one nation, Liechtenstein, has since ratified that definition. As Article 5 subsection 2 of the Rome Statute currently reads:

The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Even if such a provision were fully adopted and ratified today, the ICC would still be unable to prosecute Bush and Blair. Article 22 of the Rome Statute codifies the principle of *nullum crimen sine lege*: "A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court." Because the 2003 invasion of Iraq would predate a present adoption of a crime of aggression, Article 22 would preclude such a prosecution. Furthermore, Article 24, the non-retroactivity statute, dictates that "[n]o person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute" and that "in the event of a change in the law applicable to a given case prior to a final judgment [sic], the law more favourable [sic] to the person being investigated, prosecuted or convicted shall apply."

There is, however, a possible argument that the crime could be considered *jus cogens* — literally, "crimes of thought" — universal atrocities which are prohibited and should be prosecuted regardless of statutory restraints. Such an argument proved persuasive in the Special Court for Sierra Leone's prosecution [PDF] of Sam Hinga Norman, where the use of child soldiers was found to be prosecutable despite a lack of codified statutory law. However, given the Rome Statute's codification of other *jus cogens* — such as genocide, apartheid and torture (child soldiers are prohibited by Article 8, subsection b, part xxvi) — the canon of statutory interpretation *expressio unius est exclusio alterius* (the express mention of one thing excludes all others) would likely be found to be controlling, thus precluding charges of aggression against Bush and Blair for commencing the Iraq War.

Article 22 raises even further statutory bars to a prosecution of Bush by requiring that the crime occur within the jurisdiction of the court. Article 12 recognizes that, as a precondition to the exercise of jurisdiction of the ICC, the Court may exercise its jurisdiction only if one or more of the States involved are Parties to the Rome Statute or have accepted the jurisdiction of the Court. In other words, a state must submit itself to ICC jurisdiction. Neither the US nor Iraq has ratified the Rome Statute and, therefore, short of a UN establishment of a Special Tribunal, Bush is beyond the jurisdiction of the ICC. Even if either the US or Iraq ratified the Rome Statute today, such a prosecution would be precluded by Article 11, subsection 2: "If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State."

The UK, however, is a party to the Rome Statute; but, it is still highly unlikely that Blair will be prosecuted by the ICC. Under the principle of complementarity embodied in the Preamble, Article 1 and Article 17 of the Rome Statute, a case is only admissible to the jurisdiction of the ICC when the defendant is citizen to a nation that is "unwilling or unable genuinely to carry out the investigation or prosecution." Surely, the UK has a sufficient criminal justice system in place to prosecute crimes, so the question becomes that of unwillingness. Article 17, subsection 2 establishes protocols to determine unwillingness; however, it is unlikely that the ICC will find that the UK has been unreasonably unwilling to prosecute a crime which had not yet been codified at the time it was allegedly committed — a prosecution that would contravene the ICC's own principles and violate Article 22.

Therefore, an ICC prosecution of Bush and Blair is not only highly unlikely but would also most likely be illegal. Presumably, Tutu knows this. He is a highly skilled and experienced diplomat — hence his qualifier that we live in an inconsistent world — and it is neither the place nor the intent of this article to debate the virtues of Tutu's position, the Iraq War, the ICC or any juxtapositions thereof. This article is intended merely to state that those who call for the utilization of Tutu's declaration as a starting point for an ICC indictment of US and UK leaders simultaneously seek an unprecedented and illegal expansion of the court's power.

*Jesse Oppenheim is a Notes and Comments Editor of the Brooklyn Journal of International Law.*



## The Guardian

Thursday, 13 September 2012

### Khmer Rouge 'first lady' ruled mentally unfit to stand trial in Cambodia

Pol Pot's sister-in-law Ieng Thirith, a key figure in the Khmer Rouge regime, is set to walk free after court ruling



*Ieng Thirith, a former social affairs minister in Cambodia, is said to have Alzheimer's disease. Photograph: Mark Peters/ECCC/EPA*

One of the most senior figures in Cambodia's brutal Khmer Rouge regime is set to walk free this week after an international court ruled she was mentally unfit to stand trial.

The court said there had been no improvement in the mental health of Ieng Thirith, a former social affairs minister and sister-in-law of the late architect of the 1970s "Killing Fields" revolution, Pol Pot, since experts said in November that she was suffering from Alzheimer's disease.

The 80-year-old, known as the "Khmer Rouge first lady", would be released on Friday if no appeal was lodged by prosecutors, said Neth Pheaktra, a spokesman at the extraordinary chambers in the court of Cambodia (ECCC), as the hybrid UN-Cambodian tribunal is known.

Although a recovery was never expected, the release of Ieng Thirith, a French-educated former Shakespeare scholar, will be another blow for Cambodians seeking an explanation for the horrors of the Khmer Rouge's four-year reign of terror.

Since it was set up in 2005, the court has suffered from a shortage of funds and has been beset by resignations and allegations of political interference. It has delivered only one verdict: life imprisonment for the chief of the notorious Tuol Sleng prison, Kaing Guek Eav, better known as Duch.

An estimated 1.7-2.2 million people – nearly a quarter of the population – died during Khmer Rouge rule from 1975 to 1979. They were executed or tortured to death or died of starvation or disease during Pol Pot's attempt to create a peasant utopia.

The ECCC said in a statement that there was no chance Ieng Thirith could be tried in the foreseeable future, so the charges of crimes against humanity and genocide would be dropped and the court was "obliged to order the accused released from detention".

Ieng Thirith was one of four elderly and frail defendants in case 002, the court's most high-profile case to date.

Others in the dock are "Brother Number Two" Nuon Chea, the ex-president Khieu Samphan and the former foreign minister Ieng Sary, Ieng Thirith's husband.

Many Cambodians fear that because of the complexity of their cases, the elderly suspects could die before a verdict is delivered. Ieng Sary, 87, is in hospital suffering from dizziness and fatigue.

Stephen Rapp, the US ambassador at large for global criminal justice, told reporters the ruling was a "well-founded decision" based on evidence and expert opinion. The US announced on Thursday it would give another \$5m to the tribunal to help with funding.

Ieng Thirith was the sister of Pol Pot's first wife, Khieu Ponnary.