

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



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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

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New York Times

Tuesday, 9 July 2013

Opinion

A Tribunal's Legal Stumble

By KENNETH ROTH

By most measures, the International Criminal Tribunal for the Former Yugoslavia is the gold standard for international justice.

With 69 convictions, it has brought to justice many of the people behind the ethnic cleansing of the 1990s Balkan wars — the worst atrocities in Europe since World War II. Some three million people were forcibly displaced across the region and well over 100,000 killed in Bosnia alone, including nearly 8,000 murdered in the genocide centered on the town of Srebrenica that began 18 years ago Thursday.

But as the tribunal winds down, it has suddenly established a precedent that, unless changed, could cripple future efforts to prosecute senior officials responsible for human rights crimes.

Senior officials usually work through others to commit atrocities. When they act through their formal subordinates or by explicit agreement with others, their criminal liability is fairly straightforward. But many leaders are too savvy to expose themselves in this way. Instead, they use irregular forces — the janjaweed in Darfur, the shabiha in Syria, paramilitary forces in Bosnia — without formal ties or explicit understandings. The challenge facing tribunals is to determine when support for such forces amounts to responsibility for “aiding and abetting” their crimes.

Aiding-and-abetting liability has long been understood to require proof beyond a reasonable doubt that the accused knew that his conduct had a substantial likelihood of aiding a crime and that the aid had a substantial effect. In its waning days, however, the tribunal has seized on cursory references in earlier cases to require a third element — that the accused “specifically directed” the crime.

This makes little practical sense. Officials who want to facilitate mass atrocities are rarely so dumb as to give explicit orders. Rather, they tend to proceed by indirection, giving aid to a criminal enterprise that is already in motion.

The tribunal had previously mentioned a specific-direction requirement only in a series of cases in which the doctrine made little difference to the outcome. The suspects had been at or near the scene, so the purpose of their aid was obvious.

But in the case of the former Yugoslav military chief of staff, Momcilo Perisic — the first aiding-and-abetting case to reach the appellate stage involving an official operating at a distance from atrocities — the tribunal relied on the doctrine to acquit him.

What was the tribunal thinking? Some have alleged nefarious influence on the tribunal's chief judge, Theodor Meron. But I have known Judge Meron for more than two decades and have always found him to be a man of integrity and principle.

I have not discussed the merits of the case with him or any other judge, so I can only surmise the rationale for the tribunal's ruling. I suspect one factor was fear of creating a precedent that could lead to unfair accomplice liability for anyone who supports a party to a conflict that then commits human rights crimes.

That is a legitimate concern, but it should be sufficient to prove that the provider of aid knew of the substantial likelihood that the forces receiving it would devote it to criminal activity. If that assistance substantially advanced those crimes, the provider deserves criminal liability.

The tribunal acquitted Perisic because, apart from committing atrocities, the Bosnian Serb forces that he aided were engaged in a military effort that was presumed legitimate. Without evidence that Perisic specifically directed that aid be used for atrocities, the tribunal concluded that he could have intended the aid for only the war effort.

But the Bosnian Serb war effort was built on systematic atrocities, as Human Rights Watch and the tribunal itself have found. Since there was no evidence that Perisic gave a specific direction that the arms not be used for atrocities, anyone supplying arms would have known that they would aid atrocities.

The danger of the Perisic precedent is not merely theoretical. It could affect a separate tribunal that is considering whether to uphold the conviction of **former President Charles Taylor of Liberia**, who was convicted of aiding and abetting atrocities by Sierra Leone rebels. And the ruling undermines the ability of international criminal law to deter other leaders from similar murderous assistance — so long as they refrain from specifically directing the crimes that they assist. Russia's and Iran's assistance to Syria comes to mind.

The Yugoslav tribunal still has an opportunity to correct this damaging new doctrine. A separate panel of tribunal judges is considering a case against other officials charged with aiding and abetting atrocities from a distance. The tribunal should affirm — as other panels have done — that the accused does not have to give specific directions to commit crimes to be held criminally liable for aiding and abetting.

Kenneth Roth is executive director of Human Rights Watch.

MmegiOnline

Tuesday, 8 July 2013

ILEA produces African genocide investigators

BAME PIET

Staff Writer

The International Law Enforcement Academy (ILEA) in Otse (Police College) has produced 40 African investigators to be deployed anywhere in the world to probe genocide or mass crime scenes.

The investigators graduated last week after a two-week course in genocide or mass crime investigations. Addressing journalists on the sidelines of the 237th US independence celebrations in Gaborone last Thursday, Stephen Rapp, an international prosecutor said that the 40 investigators were in Botswana to get skills to investigate and prosecute cases of massive killings and how to handle them before they become a crisis. He said that investigations have in the past proved inadequate in gathering the necessary evidence for a trial.



Rapp, a US ambassador-at-large for war crimes issues said that Botswana has shown the international community that it does not condone any human rights abuses. “Botswana is a country that stands up strong and talks when innocent men, women and children are victimised, it doesn’t make any difference whether it is somebody from the north or the south, who is responsible and needs to be held to account. “That is why we are here for two weeks with 40 investigators from across African countries - Kenya, Sierra Leone, Liberia, Uganda, Rwanda and Botswana,” he said.

He added that Botswana has demonstrated its commitment to hold even powerful man to account for crimes, hence the country was chosen to host the course, which ran from June 17 to last week. The course was designed to develop the capacity of law enforcement officials in Africa, to manage and conduct investigations of war crimes, crimes against humanity and genocide nationally and internationally. It was facilitated by the International Institute for Criminal Investigations and ILEA. The graduates will be put on a register and be deployed anywhere in the world to investigate genocide cases and help in prosecution of those deemed responsible.

Rapp is an international prosecutor who handled the Sierra Leone (Charles Taylor) and Rwanda genocide (Tanzania UN Tribunal for Rwanda) cases. The International Criminal Court charged the former Liberian leader Taylor with war crimes and crimes against humanity in April 2003 and he was convicted in May 2012. He was accused of funding rebels in neighbouring Sierra Leone during a decade long civil war. He is now serving 50 years in The Hague, Netherlands. In April 1994, a tension that had been simmering between Hutu and Tutsi ethnic groups in Rwanda exploded into full-blown genocide claiming an estimated 800,000 lives in the space of 100 days. Some of those responsible were finally convicted and sentenced to 10-15 years in jail.

Press TV

Thursday, 11 July 2013

Some criticisms are valid and reform is needed of the ICC: Toby Cadman

Press TV in its Africa Today program has conducted an interview with Toby Cadman, international criminal law specialist, London about the question of credibility of the ICC, the International Criminal Court and accusations of it targeting leaders from Africa. The following is an approximate transcript of the interview.

Press TV: In criticism of the ICC there seems to be an exclusive focus on African leaders, which brings the criticism that this body is a tool for some bigger political agenda, namely a Western agenda. Is there some truth to that in your opinion?

Cadman: Well, I think that's certainly the appearance when you look at the cases that have been dealt with to date. Whether that is a conspiracy by the ICC I think that's probably unlikely.

But there is an over-concentration on African countries in the matters that have been brought before the ICC.

Press TV: Is that because it's easier to get them?

Cadman: Well, if you look at the example of Kenya. Kenya is really going to be the litmus test for the ICC - it's integrity is going to be put on trial in the Kenyan case.

Now, the Kenyan case is a particular point in example because that was a self-referral, so it's not necessarily a matter that the ICC has particularly targeted. But had there been will and ability at the national level as Evelyn Ankumah (Africa Today guest) has said to put these matters on trial, then the ICC wouldn't have needed to involve itself.

So there is also the question of whether African states are dealing with this themselves before the ICC is required to get involved - and that is big question.

And the point that you make about whether this is a matter that the African Union; whether there should be an African criminal court, it's a really important question and arguably there is already an institution there that could be used as a halfway point between national justice and international justice.

Press TV: Which institution is that?

Cadman: You have the African Court of Human Peoples Rights and there has been much discussion about extending its jurisdiction to criminal jurisdiction. That hasn't taken shape yet.

But as an individual, as a lawyer who's focused on war crimes in a number of different jurisdictions, the one thing you realize is that justice is better served closer to home.

So, if you can put these cases on trial where the crimes are being committed then victims will have a greater sense of closure. But that institution and that process has to be legitimate.

Press TV: Evelyn Ankumah of Africa Legal Aid says Kenya was a case taken up at the initiative of the ICC prosecutor. Could you clarify the point about it being a self-referral?

Cadman: Yes, my apologies. The situation with Kenya, you're dealing with, it's a state party. And it's the ICC prosecutor who had looked at the matter of a state party.

So it's not a self-referral in the sense that the Kenyan government referred the situation to Kenya, but it's a state party as signatory to their own statute and the ICC prosecutor obviously exercised jurisdiction under their own statute. So I apologize for the mistake on that - it is a slightly different situation.

Press TV: The potential solution seems to be for Africa as a continent to start dealing with its own criminal issues. Do you think this whole situation could be like laying the seed bed for Africa to move much quicker with regard to that?

Cadman: Well it could. I think having an African court is one solution. I do also think there has to be an emphasis on the national jurisdiction. States have the right to determine matters within their own jurisdiction.

And as Evelyn has said, the international process is the court of last resort and it's a very expensive and very time consuming process.

Press TV: I believe they've spent over a billion in the eleven years they've been around. And how many prosecutions have happened?

Cadman: A handful. International tribunals generally; if you look at the tribunals of temporal jurisdiction like the Yugoslav and the Rwandan tribunals, they perform a certain role, but they're very, very costly and very time-consuming.

Yugoslavia is a particular example because there were national tribunals within that jurisdiction as well that complemented the ICTY. Bosnia is a particular example and I say that because that's where much of my experience comes from where there was a national court with international assistance.

That's actually looked upon as being a model for the future - it's certainly a process that we are advising and working on for the conflict in Syria, to have a court of national jurisdiction with international assistance at some future stage. So that's also something that African countries can look to.

And then of course we now have the situation in Senegal, which I think is a very, very positive step - having a court of national jurisdiction - provided it has integrity. And then the ICC remains as that court of last resort.

Press TV: Do you see these shortcomings being talked about? How would it be reformed and where's the push going to come from?

Cadman: International justice is imperfect. The ICC has suffered a great deal of criticism. Some of the criticisms are valid. Clearly it does need to be reformed. I'm not one to propose what those reforms are because I think the institution itself has to take a long hard look at itself and determine where it can improve.

Press TV: Do you think taking a back track on the issue of the Kenya warrants would be a way forward for the ICC or would it lose even more integrity?

Cadman: Well, I'm in a slightly difficult position because I used to be on the Kenyatta defense team, so in that sense it's difficult for me to make that call, but I think the Kenya case is a very important case for the ICC because how it goes from here will determine how it is perceived internationally.

One of the areas where I think there does need to be much greater emphasis and that is this unfamiliar principle of complementarity where we are, as we we're saying, dealing with everything under national jurisdiction first and only then go to the ICC.

My personal view is that complementarity does impose an obligation on the ICC and the international community generally to ensure the national jurisdiction has the capacity to deal with things internally - be that in ICC training judges prosecutors and lawyers in how to deal with these matters, providing technical assistance, I think that is something the ICC needs to look at.

As an international lawyer who believes that impunity in all its forms must be brought to an end, I do of course believe in the ICC, I fully support the ICC from a theoretical standpoint. But it needs to be reformed.