

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



PRESS CLIPPINGS

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

as at:

Wednesday, 18 April 2007

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

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The News
Wednesday, 18 April 2007

The transfer of Charles Taylor to The Hague: a cause to rethink

By Allieu Vandi Kamara

The decision by the President to move the seat of the Court in the Charles Taylor trial from Freetown to The Hague has had serious implications for the court. Given the political and legal significance of the Taylor trial in the continent at large, his trial in The Hague may possibly, like the Dujail Tribunal which tried former Iraqi leader Saddam Hussein, discredit the court as nothing more than the new imperialism disguised as international rule of law to tame the "beast of impunity".

The transfer of the trial has undermined the entire rationale for having the court located where the crimes were perpetrated, thus making it difficult for people, in whose name and on whose behalf the court is said to be rendering justice, to access the process of justice in the trial. Indeed for many victims, the most significant succor they can get for their afflictions during the decade long conflict is for them to see those that they consider responsible, tried in their presence.

However, with the trial being conducted in The Hague, Sierra Leoneans and Liberians, particularly war victims, would not be getting first hand information of the proceedings. The transmission of the trial through video link will not be enough as many people, particularly in Sierra Leone do not have access to television sets, and for those who do, electric power supply remains a crisis. Equally so, for two monitors/observers (from civil society groups) to report to the whole country every trial month on proceedings in The Hague will be travesty of accountability. Hence, the people would have been denied the right to see, first hand, justice being administered.

The change in the trial venue also makes room for serious financial logistical and administrative burden on the court. The cost of hosting Charles Taylor's trial in The Netherlands has been projected at \$20 million. The establishment of a second Special Court Office in The Hague, the relocation of Trial Chamber II, the re-deployment of staff, the transfer of and accommodation arrangements for witnesses, and the establishment of an enhanced Outreach presence in Liberia are very challenging.

The President of the Court, in the Order Changing venue, stated that "while it is true that certain witnesses may have to travel to The Hague, this should not present an undue financial or administrative burden." It is worth noting that as of 30 January 2007, it has been reported that the court only had sufficient funds to continue operations until the middle of the year. This will be halfway through the opening statement of trial scheduled for 4 June.

Thus, if the court fails to solicit more funds from donor countries, there is the possibility that the trial, once started, will not be finished. Hence continuing to stage the trial in The Hague will impose undue difficulty for a court that is already bleeding white. Ever since Charles Taylor's arraignment before the court, he

had relayed two concerns. First, fear for his life and second, that he is completely opposed to his transfer to The Hague. Pursuant to Article 17(3) of the Statute of the SCSL which provides for "The accused to be presumed innocent until proved guilty according to the provisions of the present Statute," Mr. Taylor's trial should be transparent, fair, just and equitable. On the contrary, the Taylor Defence has filed a number of Motions alleging that the change of venue has resulted in violations of their client's rights to equal treatment with other SCSL detainees contrary to Article 17(1) of the Statute of the SCSL which states that "All accused shall be equal before the Special Court." The Defence alleges that the accused's lawyer client privilege consultations have been subjected to video surveillance, and the Detention Centre at the ICC where Mr. Taylor is held in custody has imposed an excess of unnecessary, unreasonable, and discriminatory restrictions that are not applicable to other detainees in Freetown. The Defence has incriminated the Special Court for abdicating its jurisdiction in a flawed Memorandum of Understanding between the Court and the ICC over decisions relating to Mr. Taylor's detention conditions. Consequently, the defence has even threatened to boycott the trial if these "unnecessary, unreasonable, and discriminatory restrictions" are not removed immediately.

Conclusion

The underlying principle for the establishment of the Special Court, hailed as a new model because it is located where the atrocities were committed, is arguably to provide the victims of the war with some sense of justice and restitution and to allow for a mix of international legal principles with local participation from those affected by the conflict. With the International Criminal Tribunal for Rwanda, sitting in Arusha, Tanzania already criticized for denying the people of Rwanda the opportunity to closely follow the trial, thus having very little impact on Rwandans, the same could be said of the Special Court if the Taylor trial is not made accessible to those most affected.

Be that as it may, the court must take into account the rights and wishes of the accused, who, incidentally, is the only non-Sierra Leonean and with the highest profile before the court, lest there be a claim, again as in the internationally discredited Dujail Tribunal, for failing short of fairness standards.

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Awoko

Wednesday, 18 April 2007

Salone to look into US human rights report

By Mohamed Fofanah

The parliamentary committee on human rights in Sierra Leone, the US embassy, the United Nations Development Programme, the Human Rights Commission and Campaign for Good Governance would be

hosting a one-day workshop today to look into a recent report by the Bureau of Democracy, Human Rights and Labour.

The predominant purpose of the seminar is to review the recently released U.S Department of State Annual Human Report.

According to the chairman of the parliamentary human rights committee, Hon Dr Alusine Fofanah, the discussions would focus on the Sierra Leone section of the report, publicizing its contents as a way of sensitizing citizens about the significance of human rights,

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Salone to look into US human rights report

From Page 2

and generating public debate on the key findings in relation to Sierra Leone.

He also informed that the seminar would be an opportunity to introduce the recently established Human Rights Commission to the national human rights community.

This U.S report, which was released in March 6, 2007, holds that: "the government generally respected the human rights of its citizens. However, there were serious problems in a number of areas, including: security force abuse, including rape, and use of excessive force with

detainees, including juveniles; police theft and extortion; poor conditions in prisons and jails; official impunity; arbitrary arrest and detention; prolonged detention, excessive bail, and insufficient legal representation; restrictions on freedom of speech and press, although fewer than in the previous year; government and chiefdom detention and harassment of journalists; harassment of opposition party supporters by ruling party members; widespread official corruption; societal discrimination and violence against women; female genital mutilation (FGM);

child abuse; trafficking in persons, including children; forced labor, including by children; and child labour. During the year the government made progress in combating trafficking in persons.

In October parliament appointed five representatives to a newly established National Commission for Human Rights, which has the mandate to implement recommendations of the TRC.

On December 11, President Kabbah swore in the five members of the commission. UNIOSIL provided financial support"

United Nations  Nations Unies

United Nations Mission in Liberia (UNMIL)

UNMIL Public Information Office Media Summary 17 April 2007

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

International Clips on Liberia

Liberia plans security force to replace UN peacekeepers

MONROVIA, April 16, 2007 (AFP) - The government of Liberia plans to set up a rapid reaction force to quell any riots when UN peacekeeping troops pull out, the information minister said Monday. "This unit will assume duty upon the departure of the United Nations Mission in Liberia (UNMIL)," Lawrence Bropleh said in a statement.

International Clips on West Africa

AP 04/16/2007 17:42:16

Ivory Coast president, rebel chief start dismantling buffer zone

PARFAIT KOUASSI

ABIDJAN, Ivory Coast - With a ceremonial bulldozing of a wooden barricade, Ivory Coast's president and the man who tried to unseat him in a violent rebellion started Monday to dismantle the U.N.-patrolled buffer zone that has split the country since an attempted 2002 coup sparked civil war. The band of land running 600 kilometers (373 miles) east to west and about 20 kilometers (12 miles) wide has divided Ivory Coast between a rebel-held north and a government-controlled south for nearly five years keeping an uneasy peace amid stalled accords between the two sides.

Local Media – Newspaper

Citizens Seek Constitutional Reform to Safeguard New Democracy

(Heritage and The News)

- Some citizens who recently attended a nation-wide constitutional review forum held in Margibi, Nimba, Bong and Grand Gedeh Counties have indicated the need to amend certain provisions in the Liberian Constitution. The citizens believe that constitutional reform would help safeguard the new Liberian democracy.

Southeasterners Petition President Johnson Sirleaf to Seek Re-election

(The Inquirer, Heritage and The Liberian Diaspora)

- Presidential Press Secretary Cyrus Badio told a news briefing Monday that President Ellen Johnson Sirleaf was petitioned last week by some citizens of Grand Gedeh County to seek re-election during the country's next elections scheduled to be held in 2012.

Security Sector Reform Gets Boost

(The Inquirer)

- [sic:] Liberia's Security Sector Reform is expected to get a major boost as a top commander of the United States Military, General William E. Ward, is due to arrive in the Country on tomorrow, Wednesday to sign an important agreement with the

Liberian Government. The Agreement would allow the two countries to exchange support, primarily by combined exercises, training, deployment, port calls, operations or other cooperation and efforts.

Citizens Make Demands for National Development

(Daily Observer)

- [sic:] President Ellen Johnson Sirleaf has ended her 5-county tour of the Southeast with multiple demands for more roads, schools, health facilities, jobs and payment of salaries. At several town hall meetings hosted by the President, the citizens of Grand Gedeh, River Gee and Maryland Counties re-echoed an immediate need for improvement in the region.

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

Former Democracy Campaigner to Arraign Government for Killings

- One of the ringleaders of the Progressive Alliance of Liberia, a grassroots organization which spearheaded the struggle for democracy in Liberia in the 1970s and 1980s, Mr. Gabriel Baccus Matthews said that he would institute a “class action suit” against the Government of Liberia seek to compensate for families of people allegedly killed by government forces when they moved in to quell the famous April 14, 1979 rice riot.

(Also reported on ELBC and Star Radio)

Journalists Group and UN Mission Hold Roundtable Conference on Media

- According to a press release, the Press Union of Liberia in collaboration with the United Nations Mission in Liberia will today, Tuesday, hold a media round-table conference themed: “Strengthening the Liberian Media-Initiating Medium and Long-Term Strategies for Media Development” to provide the platform for Liberian media executives and stakeholders to discuss the performance of the media and suggest concrete initiatives for strengthening the media.

(Also reported on ELBC and Star Radio)

Donors Meet on Electoral Administration Project Document

- In a release issued in Monrovia yesterday, the National Elections Commission said that a major donors meeting was underway to highlight the project document to support electoral administration and management in Liberia, emphasizing that the forum would develop a framework for raising funds to support a four-year project for electoral assistance to Liberia.

(Also reported on ELBS and Star Radio)

Complete versions of the UNMIL International Press Clips, UNMIL Daily Liberian Radio Summary and UNMIL Liberian Newspapers Summary are posted each day on the UNMIL Bulletin Board. If you are unable to access the UNMIL Bulletin Board or would like further information on the content of the summaries, please contact Mr. Weah Karpeh at karpeh@un.org.

Afrol News

Tuesday, 17 April 2007

<http://www.afrol.com/articles/25122>

Ex-Liberian President's associate cries foul

A close associate of the former President of Liberia, Charles, Taylor, has alleged that two white officers from the Special Court of Sierra Leone came to Liberia to kidnap a former business associate of Mr Taylor, Jungles James.

At a news conference in the Liberian capital Monrovia, Abel Massaley, told the press that he had suspected that the move was calculated purely to recruit bogus witnesses to testify against Mr Taylor, who is currently awaiting to be tried by the special court for his role in war and crimes against humanity.

Abel Massaley is a representative of the former Mr Taylor's former ruling National Patriotic Party in the senate.

Mr Massaley added that the Mr James' kidnappers were seen driving a jeep marked City 9. He said the alleged kidnapping took place on 2 March and since then nothing has been heard from Mr James.

Asked how the men had succeeded in their operations, Abel Massaley said the officers visited Mr James in his residence and make friendship with him.

However, news from some quarters contradict Abel Massaley's allegations because Mr James was said to have willingly offered himself to testify against Mr Taylor, for he has got an axe to grind with him. He was said to be angry with Mr Taylor for cheating him in a diamond deal while he was still the President of Liberia.

The special court officials said they have got over 150 witnesses to testify against Mr Taylor on 4 June this year.

Mr Taylor's attorneys earlier queried that their client was being monitored in cell through secret cameras. Their appeals to delay the case until September to allow them better prepare for the case was turned down.

By staff writer

Fortaylor.net

Undated

<http://www.fortaylor.net/2007-04-13-Charles-Taylor-Liberia-Press-Release-Article35.htm>

Visit Taylor at the Hague

Press Release
Staff Writer

The Association for the Legal Defense of Charles G. Taylor is pleased to announce that the Special Court for Sierra Leone (SCSL) and the International Criminal Court (ICC) in The Hague have issued forms that will allow people to apply to visit Former President Taylor and other detainees of the SCSL and ICC.

For further details, please click the following documents.

Application for Permission to Visit a Detained Person (ICC)

[View Document](#) | [Download and Print Document](#)

Visitor Declaration and Application (SCSL)

[View Document](#) | [Download and Print Document](#)

The Association for
the Legal Defense of
Charles G. Taylor

The Walrus Magazine

Wednesday, 18 April 2007

<http://www.walrusmagazine.com/articles/2005.11-politics-a-tribute-paid-to-reason/>

A Tribute Paid to Reason

Cross-examining the legacy of the Nuremberg war-crimes tribunals

by Chris Tenove

The Special Court for Sierra Leone stands on a hill overlooking the ragged cityscape of Freetown. UN soldiers in dark sunglasses guard the thick concrete walls that surround the court, shielding it from the impoverished and war-ravaged streets below. Just six years ago, rebel fighters carved their way through these neighbourhoods, leaving thousands of corpses, burning houses, and hacked-off limbs in their wake. It took three years for UN and British troops to strong-arm the militants into a peace agreement. Today, Sierra Leoneans can visit the Special Court and study the impassive faces of the men charged with orchestrating the war and its atrocities.

On the first day of the trials, David Crane stepped to the podium to explain why the accused men deserved the censure of all humanity. Throughout his opening address to the blackrobed judges, Crane felt an invisible presence at his side. "It was eerie," he later told me. "I felt that Robert Jackson was standing right next to me." Jackson, who led the prosecution of twenty-two Nazi leaders at the end of World War II during the famed trials in Nuremberg, Germany, was the only other American to have acted as chief prosecutor of an international war-crimes tribunal. On a shelf in his office, Crane kept a memoir of the Nuremberg trials, bookmarked to the page with Jackson's opening address. That historic speech began:

...The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

Before he came to Sierra Leone, Crane was the deputy inspector-general of the US defence department. In the corner of his Freetown office sat a large wooden carving of a swooping eagle with a snake in its talon. The statue screamed "American justice." Indeed, the United States has done more than any other country to spur the war-crime trials that have appeared in the last fifteen years, beginning with the International Criminal Tribunal for the former Yugoslavia and now tribunals for Rwanda and Sierra Leone, and (likely) Cambodia and East Timor.

"Nuremberg is the foundation stone for what we are doing here in Sierra Leone, as well as the courts for Yugoslavia and elsewhere," says Crane, who stepped down as chief prosecutor this July. "And the culmination of the Nuremberg movement is the International Criminal Court (ICC)."

But as Crane well knows, his own government is a stalwart opponent of the ICC, and many consider his country a rogue state when it comes to international law. Around the world, the legality of the Iraq invasion is still being debated, and there is a broad consensus that the American military has subverted or ignored the Geneva Conventions, from Abu Ghraib to Guantánamo Bay. All this points to a paradox in contemporary international relations: as we mark the sixtieth anniversary of the Nuremberg trials, the United States is both a great champion of the Nuremberg legacy and its most powerful adversary.

On weekdays, a desultory parade of accused murderers, thieves, and other criminals appears in Courtroom 600 of the Nuremberg Palace of Justice. But on this Sunday evening in July, the court is empty except for a German television crew and an impatient American. “Come on, make it quick, I’m on the fly, I’m in demand,” Ben Ferencz says in mock exasperation while the Germans fiddle with a boom microphone.

Ferencz, an eighty-five-year-old New Yorker with a vaudeville impresario’s patter, once stood in this room and accused twenty-two men of killing more than a million civilians, mostly Jews. He was the chief prosecutor in what press reports called the biggest murder trial in history—the trial of the leaders of the *Einsatzgruppen*, the Nazis’ mobile killing squads.

Courtroom 600 is an elegant room with two-tiered crystal chandeliers, sombre wood panelling, and windows smothered with heavy velvet drapes. Over the entryways are green marble arches with statuettes of Adam and Eve, the scales of justice, and, most conspicuously, a bust of Medusa, her hair a writhing mass of serpents and her mouth frozen in a silent shriek.

The room looks nearly the same as it did in 1945. There, sitting in the prisoner’s dock near the Medusa arch, Nazi Germany’s leaders declared themselves *nicht schuldig* of launching an illegal war that cost over fifty million lives. Here, in front of the judge’s bench, prosecutors stood at a temporary lectern and proved that the Germans had slaughtered millions of Jewish civilians. At the back of the room, a pack of more than 160 journalists—at that point the largest press gallery in history—watched the test run of this new tactic in international relations: powerful men, leaders of their nation, being held legally responsible for wartime atrocities.

Ferencz finishes with the television crew and leans against a wooden bench in the audience gallery. He is a diminutive man, sharply dressed in a dark suit with a crimson handkerchief and a tie dotted with tiny black frogs. Although he was born in Transylvania, Ferencz grew up in the notoriously rough Hell’s Kitchen neighbourhood in New York. His parents were poor, uneducated immigrants, but he attended college and then Harvard Law School on a series of scholarships. Four years after he graduated, a boyish-looking twenty-seven-year-old, he stood in this courtroom and confronted twenty-two mass murderers.

Ferencz is quiet for the briefest of moments as he peers through thick glasses at the prisoners' dock where his former adversaries sat. "You know why I had twenty-two defendants when there were 3,000 men who for two years had done nothing but go out and murder Jews and gypsies?" he asks. "Because that's how many chairs would fit in the dock! That's an absurd way to do justice, but that's how things happened back then."

The Nuremberg trials were an imperfect but crucial development in the evolution of international law, he says. He has spent most of his life since then trying to educate, coax, and berate a world that has often seemed reluctant to build on that legacy. Three years ago, he attended an event that should have been the high point of his six-decade campaign. On April 11, 2002, delegates at a special United Nations ceremony erupted in applause to celebrate the birth of the International Criminal Court, fifty-four years after the idea was first proposed by the UN General Assembly as the logical conclusion of the Nuremberg process.

But for Ferencz it was a bittersweet moment. At the celebration, the seat reserved for the American ambassador to the United Nations was conspicuously empty. Even before his election, George W. Bush had expressed a certain disdain toward international mechanisms such as the Comprehensive Nuclear-Test-Ban Treaty and the ICC, which he believed might constrain US power. His foreign policy in office was being guided by men such as Dick Cheney, Donald Rumsfeld, and John Bolton, all proponents of the unfettered use of American might. That philosophy became more strident after the 9/11 terrorist attacks, and the model of law enforcement through international cooperation became an afterthought to America's pursuit of security through its global military presence. In keeping with this, the Bush administration had declared that the United States would neither join nor support the ICC.

So at the UN celebration, Ferencz made a symbolic protest against his government. He planted himself proudly in the vacant US seat and, calling himself the "unofficial representative of the American people," he flashed the audience the V sign, for victory.

Ferencz is convinced that all people, including Americans, will be best safeguarded by an international system that tightly and effectively regulates the use of military force. The ICC, he argues, is a key step toward that goal, and he plans to devote the rest of his life to convincing Americans that the Bush administration is making an "outrageous" mistake when it casts aside the ICC and other international legal norms. "The United States," he says, "seems to have forgotten what we tried to teach the world at Nuremberg."

Back when the battles of World War II were still raging, the United States and its allies didn't look as though they would be teaching the world any great lessons in jurisprudence. Winston Churchill repeatedly argued that leading Nazis should be shot as soon as they were identified. And when Joseph Stalin, at what has been described as "a very boozy evening" in Tehran in November 1943, half-jokingly proposed that Allied armies should "liquidate" 50,000 officers of the German General Staff,

Franklin Roosevelt replied playfully that 49,000 would do.

Roosevelt didn't mean it, of course, but the impulse for swift vengeance was certainly there. Public opinion polls showed that Americans wanted executions, not trials. One of Roosevelt's most powerful cabinet ministers, Henry Morgenthau, Jr., the secretary of the treasury, was calling for the decimation of Germany's heavy industry and the execution of hundreds of "arch-criminals" by military firing squads. But the secretary of war, Henry L. Stimson, appealed to the president's better angels. He argued that it would have a "greater effect on posterity" if Germany's leaders were tried and punished "in a dignified manner consistent with the advance of civilization." Shortly after Harry Truman became president, US policy started to shift in favour of fair trials for Nazi leaders.

By that time, Ben Ferencz had become disillusioned with American post-war justice. As the US Army swept across Germany in the spring of 1945, Ferencz—then a lowly infantry sergeant—had received orders from General George Patton's office to collect war-crimes evidence in the newly conquered territory. When American forces liberated concentration camps, Ferencz would jump in a jeep, drive like hell, find the camp office, and seize the death registries and other damning records. "The objective was to get in and get out as fast as possible," he says, "because that was no place for a human being to be. I don't know all the diseases they had. Diarrhea. Dysentery. Lice. Typhus!

"The bodies were lying all over the ground. Bones wrapped in skin and rags. And then, when you thought they were all dead, sometimes they would move," he says, his voice starting to thicken. "I have flashbacks from time to time so I don't want to pause on this."

At the Dachau concentration camp, Ferencz helped an American military tribunal deliver rough justice to low and mid-level German officers. "Those trials lasted a couple of minutes," he says. "People were lined up, thirty or forty in a room. They were called upon to admit or deny being accomplices to mass murder and other war crimes. They invariably said they were innocent or acting under orders or some alibi, but they were usually all convicted. Many were executed."

These Dachau trials were what one might expect of victors' justice. Many of the defendants had been captured in the concentration camps—with their complicity so obvious, the American authorities reasoned that there was no need for a difficult, time-consuming trial. "I didn't think much of the Dachau trials," says Ferencz. "I didn't think much of the army and I didn't think much of my officers, either." He left Germany, and the Armed Services, with no plans to return. But the United States' commitment to principled legalism drew Ferencz back, and he became one of a team of American prosecutors determined to prove that senior Nazis were not just defeated opponents and evil men, but also criminals under international law.

On November 21, 1945, Robert Jackson stepped to the lectern in Courtroom 600 to deliver his opening address. To Jackson's right were eight judges—two from each Allied country—sitting in front of their respective national flags. But it was the prisoners' dock on Jackson's left that held the

audience's attention. These twenty-one politicians, state officials, and military commanders—along with Adolf Hitler, Joseph Goebbels, and Heinrich Himmler, who had all committed suicide—were the upper echelon of a nation that had laid waste to Europe. (Martin Bormann, Hitler's private secretary and the head of the Nazi party chancellery, was tried and sentenced *in absentia*.)

The most notorious of the defendants was Hermann Göring, the World War I flying ace who had been Hitler's strongman in the Nazi Party, and had gone on to become the German *Reichsmarschall*. Göring had turned into a bloated painkiller addict by the dying days of the war, but in prison he shed his excess weight and drug-induced fuzziness and became the defendants' unofficial leader.

For Jackson, the most important charge against Göring and other Nazi leaders was that they had planned and waged an illegal war. Before he became chief prosecutor, Jackson had represented the United States in the Allied negotiations over the creation of the International Military Tribunal at Nuremberg. Jackson believed that the trials should be more than just a tool to punish Nazi leaders—they should help create an international legal framework to tame war itself. To achieve this goal, he wanted to try the Germans on a charge that had never before been laid: the crime of aggression. "War had been criticized and abhorred, but as to defining the waging of aggressive war as a crime, that was unprecedented," says Whitney Harris, a square-jawed, ninety-three-year-old Midwesterner who, as a part of Jackson's team, had been given the task of prosecuting crimes related to the Holocaust.

In Jackson's view, the German decision to launch an illegal war was the supreme crime, explains Harris. The other crimes the Nazi leaders were charged with—war crimes against soldiers and "crimes against humanity"—could never have happened had an illegal war not begun in the first place.

The trial lasted eleven gruelling months. On October 1, 1946, the German leaders appeared one by one in Courtroom 600 to receive their verdicts. Of the twenty-two defendants, three were acquitted of all charges, seven were given prison terms of various lengths, and twelve (including Bormann) were sentenced to hang.

The executions were carried out on October 16. Just hours before he was to be hanged, Göring was found dead on his cot. Somehow, despite spending eleven months under twenty-four hour surveillance, he had smuggled a cyanide capsule into his cell. The ten other men were hanged in a gymnasium attached to the Palace of Justice. Each was cut down afterward and photographed with the thirteen-coiled noose still hung around his neck. To prevent future commemoration, the bodies were cremated and the ashes scattered in secret. "In the evening the eleven urns containing the ashes were taken away to be emptied into the river Isar," Harris wrote in *Tyranny on Trial*. "The dust of the dead was carried along in currents of the stream to the Danube—and thence, to the sea."

Both Harris and Ferencz believe that the criminalization of aggressive war was the most important development at Nuremberg. "Torture, rape, and every other crime will always occur in wartime, no matter what rules you lay down or what punishment you inflict on a handful of criminals," says Ferencz, who has written a two-volume book on the crime of aggression.

“The only answer is to prevent war-making itself.”

In 1998, Harris and Ferencz participated in the deliberations that led to the Rome Statute, the treaty that would establish the International Criminal Court. The crime of aggression was one of the most contentious issues. There was little doubt that the ICC would have jurisdiction over war crimes, crimes against humanity, and genocide. But the crime of aggression was trickier: what looks like a humanitarian intervention to one nation might look like an aggressive war to another. (Or, to take a more recent example, one man’s war of pre-emptive self-defence is another man’s military adventure to secure oil supplies.)

In Rome, the delegates could not agree on the definition of aggression. Nor could they agree on the conditions under which the ICC would be able to exercise its jurisdiction. US representatives insisted that the UN Security Council must first declare that a war of aggression had taken place, and only then would the ICC be able to investigate and prosecute individuals for their personal culpability. Quite understandably, some nations opposed this arrangement, since it meant that any of the five permanent members of the Security Council could use its veto to shield itself or its allies from prosecution.

The disagreement proved intractable. To prevent a complete breakdown of the negotiations, the delegates decided that the crime of aggression would remain undefined, and that the ICC could not prosecute the crime until the state parties agreed on a definition. (They are supposed to do so at a review conference scheduled for 2009.)

President Bill Clinton asked the lead US negotiator, David Scheffer, to sign the Rome Statute on December 31, 2000, in the last moments of his government. Clinton knew there was no chance that the United States would ratify the treaty anytime soon—that would require the support of two-thirds of a hostile, Republican-dominated Senate—but by affixing its signature, the United States could continue to participate in negotiations. Scheffer believes that given time, American negotiators would have been able to convince a large coalition of states to support the US position on crimes of aggression. But the Bush administration walked out of the talks in 2001, leaving the US position unrepresented. “It’s a sad situation,” Scheffer says. He believes in the ICC’s mission but noted in an email interview that “if there is any crime US leaders would be accused of before the ICC, it would be aggression . . . almost anything our military does elicits politically motivated charges of aggression.”

George W. Bush’s administration was unambiguous in its dislike of the International Criminal Court. John Bolton, the mustachioed anti-diplomat who recently became the American ambassador to the United Nations, had long vowed to take a “big bottle of Wite-Out” to America’s signature on the agreement.

Because the United States had never before “unsigned” an international treaty, Bolton, at the time a State Department official, called up sympathetic legal scholars to find out if doing so was even

possible. Jeremy Rabkin, Bolton's former colleague at the American Enterprise Institute, says he was delighted to hear from his old friend. "That's a really unusual step, to 'unsign' a treaty, and in a way it's undiplomatic," says Rabkin, a professor of government at Cornell University. "But it is also very principled. [Bolton] wanted to send a clear message that, 'No, we are never, never going to ratify this thing.'"

On May 6, 2002, the United States sent a letter to the United Nations, retracting its support for the treaty. Bolton, who signed the letter, announced that it was "the happiest moment of my government service." A few months later, the US passed the American Servicemembers' Protection Act, a clear counterattack on the newly ratified ICC. Nicknamed "The Hague Invasion Act," it gave the president the authority to use military force to extract citizens of the United States and its allies from the custody of the ICC. The act also made it possible to cut military assistance to countries that refused to enter into bilateral immunity agreements with the United States. More than 100 countries have now signed these agreements, which are necessary, the US argues, because the ICC claims jurisdiction over the citizens of countries that have not ratified the Rome Statute, in cases where the crime involves a citizen or the territory of a country that has signed on.

Most democracies, including Canada and all of the European Union except the Czech Republic, have signed and ratified the Rome Statute. So why the US opposition? For starters, says Rabkin, senior members of the Bush administration don't believe the ICC will work. The "monsters" who commit genocide and mass murder aren't the kind of people to be intimidated by the threat of judicial action, he says. What they do understand is military force. "People like Ben Ferencz give the impression that the most important thing that happened in World War II is Nuremberg. That's bizarre!" he says. "The heroes of World War II were Eisenhower, Montgomery, Patton. A bunch of lawyers strutting around afterward is just a footnote."

Today, Rabkin adds, the country that is most able to deploy force to stop atrocities is the United States. And it is true that only the United States has both the military muscle to undertake several major campaigns at one time and a self-proclaimed "mission" to bring democracy and liberty to the world.

American critics of the ICC point to possible conflicts between the court and the US Constitution, such as the right to a jury trial and other aspects of American due process. They also point out that the ICC could make it more difficult to end conflicts, since it robs individual states of the ability to grant amnesties in order to secure peace agreements. (The counter-argument is that amnesties weaken the court's role as a deterrent to mass atrocities.) But their most vehement criticism, and the one that Republican leaders use to stoke public hostility toward the institution, is the fear that weak, envious countries will use the court to target the United States. "We insist on giving ourselves the benefit of the doubt, because it's our blood on the line in places like Iraq, Afghanistan, Kosovo, or wherever," Rabkin says. "You can say that's selfish or unilateral, but that's the history of the world. Even at Nuremberg." He eagerly embraces the criticism that the Nuremberg trials were merely victors' justice. "We organized these trials to make us feel good," he says. "It was, of course, a show."

Ferencz and Harris disagree. At the end of the war, Harris notes, citizens of the United States and other Allied countries wanted swift executions, not trials. (A poll conducted near the end of the war showed that 40 percent of French citizens wanted Hitler executed immediately. Thirty percent wanted him tortured first.) It was a political risk to give the Nazi leaders a trial with a real chance of acquittal. “It was not victor’s justice,” says Ferencz. “It was a fair trial based upon existing international law, which was articulated clearly in the statute and the judgments that followed.”

Harris admits that the Allies absolutely refused to put their own wartime conduct on trial. But, he says, the Nuremberg tribunals were intended to help move the international community “to the point that if conflicts were to arise again in the future, the victors as well as the vanquished would be subject to trial.”

For Harris, the triumph of Nuremberg is not that individual Nazis were punished, but that they established an enduring legal and intellectual legacy. On October 27, 2000, he was in the Reichstag for the final debate on the ICC treaty. At the end of the session, the German parliament voted unanimously in favour. “Just imagine!” Harris says. “This is Germany, the country we prosecuted, whose leaders were executed as a result of that prosecution. That this country turned around and said, ‘You’re right. This has got to be universal’...”—he pauses to savour the memory—“...*that* is the most significant approval possible of the whole procedure we initiated at Nuremberg.”

Ben Ferencz did not use a single witness in his prosecution of the senior members of the *Einsatzgruppen*. His evidence was contained in boxes of *Einsatzgruppen* records. A typical example, he says, would read, “We entered Town X and in the first twenty-four hours we ‘eliminated’ 4,376 Jews, 820 gypsies, and 48 others.”

To many people, the *Einsatzgruppen*’s crimes defied comprehension, but Ferencz had a name for them. In his opening address, he told the judges that the twenty-two defendants were guilty of “genocide, the extermination of whole categories of human beings.”

Ferencz was the first person to articulate the term “genocide” in a court. He had learned the word from an odd, dishevelled legal scholar then wandering the halls of the Palace of Justice as part of the Polish delegation. Raphael Lemkin’s family had been killed for being Jewish, and Lemkin wanted to outlaw any future attempts to destroy a social group. He named the crime by combining *genos* (Greek for “race” or “kind”) with *cide* (Latin for “killing”).

In 1948, the year after Ferencz used the term in the Nuremberg courtroom, the United Nations General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide. Many democratic countries ratified the treaty in the first decade—but not the United States. It took forty years before the US government finally gave its legal backing to the treaty, and even then it attached a list of reservations.

Such behaviour is not unusual for the United States. Although it is a strong advocate of human rights and international criminal justice, it rarely enters into multilateral agreements to support these principles. Ferencz sees it this way: political power in his country is like a metronome, swinging back and forth between two camps. There are those who believe that the only thing that counts is military might and those, like him, who believe that “the rule of law will provide an eventual solution to the problem of conflict among nations.”

Ferencz’s position might seem naive, but he counters that those who believe in the rule of force can only point to a legacy of war and bloodshed in reply. It is his own memory of war, of the dead and half-dead scattered about the concentration camps like discarded rags, that keeps the eighty-six-year-old working seven days a week. “My greatest difficulty today is one I created myself,” he says of his all-consuming campaign to make war illegal. “Because I have dedicated myself to a goal that is impossible to meet in a human lifespan.”

Ultimately, Ferencz says, Americans will benefit if the metronome swings the other way and the United States decides to support endeavours such as the International Criminal Court. The US is in a position to spread the international rule of law; if it chooses not to do so, he warns, it may regret the missed opportunity when it slips from its current position of global pre-eminence. “As ye reap, so shall ye sow,” he says.

In Nuremberg, Robert Jackson made a pronouncement that carries an echo of that warning. As he stood in Courtroom 600 on the first day of the trials, he told the court:

We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well.