SPECIAL COURT FOR SIERRA LEONE
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International News

Jurist
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Charles Taylor and the Delayed Special Court for Sierra Leone Judgment

JURIST Columnist Charles Jalloh of the University of Pittsburgh School of Law says that the Special Court for Sierra Leone must set a date to release its ruling on the war crimes charges against former Liberian president Charles Taylor so that it can conclude its proceedings...

The case against the former Liberian president Charles Taylor, who is being tried at the Special Court for Sierra Leone (SCSL) in The Hague on an 11-count indictment for war crimes and crimes against humanity, formally started with the prosecution's opening statement on June 4, 2007.

Although the oral hearings phase concluded when the last defense witness took the stand on November 12, 2010, the defendant, his alleged victims, as well as the international public, still have no idea when Trial Chamber II will issue its judgment in one of the highest profile trials in modern international criminal law.

To those who know how important the Taylor case is for Sierra Leoneans, the delay in the release of the Taylor trial judgment may be surprising for several reasons.

First, the verdict is obviously important for the accused, but equally important, for the people of Sierra Leone in whose name the tribunal was established and asked to render credible justice. After all, Taylor is presumed innocent until proven guilty by the prosecution. He also has the right to be tried without "undue delay," which under Article 17 of the Statute of the SCSL necessarily includes the right to know the outcome of his trial. The verdict will also be an important milestone for the Court, since with the conclusion of this case, it will become the first independent ad hoc international penal tribunal to successfully complete its work and to close down its operations.

Second, Sierra Leoneans, who suffered one of the worst civil conflicts in recent history when a rag tag rebel group known as the Revolutionary United Front (RUF) attacked the eastern part of their country on March 23, 1991, have proven to be extremely patient in letting justice take its course in the most important case to be tried before the SCSL. Although the RUF claimed to be waging a "people's war" to "liberate" future generations of Sierra Leoneans from decades of Kleptocratic rule, there was nothing revolutionary about the RUF. Led by a disgruntled former army corporal known as Foday Sankoh, who had an axe to grind with the government and allegedly enlisted Taylor's help to achieve his treasonous objectives, nearly everything about the RUF proved to be conventional, scattered, and a façade.

Their preferred means and methods of warfare illustrate the point. They would typically raid a village, kidnap underage children, force them to amputate, maim, kill or otherwise commit outrageous sexual and other acts against their own family members, quickly teach them how to use an AK-47 rifle, and then drug them. The child victims, high on drugs, turned into fearless killers. In their signature orgy of violence, they would murder, rape, pillage, burn or otherwise destroy any unfortunate human being, or living thing, that crossed their path. Though gruesome, their military strategy generally worked, not to liberate, but to terrorize; a nightmare for the thousands of innocent unarmed civilians, especially women and children, who bore the brunt of the notoriously brutal "blood diamonds" driven conflict.

With the scars of a traumatic war still etched on their minds, the impatience of interested Sierra Leoneans to know the verdict in the Taylor trial is perhaps understandable. It is, after all, the last of the nine trials

conducted by the SCSL since the Court was established jointly through a bilateral treaty between the UN and the government of Sierra Leone signed on January 16, 2002. For Taylor, as well as his alleged victims in Sierra Leone, the long wait for judgment must be excruciating.

Taylor was indicted as far back as March 7, 2003. It did not take long for the existence of his indictment to be known publicly, however. That occurred on June 4, 2003, when the then SCSL prosecutor announced it, in a hurried bid to secure Taylor's arrest after he had traveled to Ghana for peace talks. A couple of months later, Taylor stepped down from the presidency. He then took up asylum in Nigeria. This permitted the establishment of an interim transitional government in Liberia, and later, a democratically elected one led by Africa's first woman head of state, Ellen Johnson Sirleaf (who recently won a second term in office). In return, Taylor claimed that he had been promised immunity from prosecution before the SCSL.

To be fair to the Court, Taylor was only arrested three years later in Nigeria, on March 29, 2006. However, he was then swiftly transferred to Liberia and then to the SCSL. A few days later, on April 3, 2006, he was arraigned at the seat of the tribunal in the Sierra Leonean capital, Freetown, and entered a plea of "most definitely ... not guilty" to all the charges. Although he was subsequently transferred to The Hague on June 30, 2006, due to concerns about security, this means that he would have been in the tribunal's custody for almost six years by the end of March 2012. Yet, Sierra Leoneans, as well as Taylor, are still in the dark regarding when to expect the trial judgment in the only single accused trial to be conducted by the Court.

The third reason why some Sierra Leoneans may become concerned about the lack of a judgment in the Taylor case is actually the Court's fault: it offered inconsistent and unrealistic dates in the timetable generated for this case in its Completion Strategy. The Eighth Annual Report of the SCSL explained that the completion strategy, which used to be available on the tribunal's website, had provided that the trial judgment would be delivered in June 2011. Sentencing judgment, if applicable, was to follow by August 2011, with the final appeal to be completed by February 2012. Later, despite some hiccups, the same annual report states that the judgment would be delivered by the end of 2011.

As we approach the end of February 2012, and still have no trial let alone appeals judgment, it is obvious that these deadlines have not been met. What are the reasons for this, we might wonder? Well, the tribunal's Eighth Annual Report essentially blamed the delay on "unforeseen legal and procedural developments." They focused, in particular, on the Taylor defense team's refusal to file their closing brief by the January 14, 2011 deadline fixed by the chamber. The defense team, which was basically seeking a one month extension of the mid-January deadline, invited scrutiny when they failed to file the final brief by the date the trial chamber specified.

But the majority of Trial Chamber II, which denied the request, was also at least partly at fault. They added nearly three months delay to the trial calendar because, in a perhaps unprecedented move in the history of international criminal trials, the majority of the Court (Judge Sebutinde dissenting) rejected the defense closing brief when it was filed three weeks late. That is significant, because the final brief sets out the central arguments on the disputed factual and legal issues in the trial. It is also usually a useful document to the judgment drafting process. Fortunately, the Appeals Chamber subsequently reversed that erroneous decision. The defense team then made their closing oral arguments on March 9-10, 2011.

Although completion strategies are admittedly based on the best information available at the time, it is equally true that ad hoc tribunals like the SCSL, which are under significant pressure to wrap up their work, use over optimistic date estimates as a way to ward off political pressure to wind down their operations from the donor states that make the tribunal's work possible. This may help explain the retention of the wrong projections, even in the latest annual report.

On the other hand, the Taylor trial has probably been one of the largest and longest running of all the cases tried by the SCSL. How large? Well, while somewhat of a rudimentary measure, the parties called about 115 viva voce witnesses in total. Of those, 94 were prosecution witnesses; while the defense called 21. Taylor, who took the stand on July 19, 2009, only completed his testimony nearly six months later on February 5, 2010. Collectively, the transcripts of testimony totalled 49,622 pages, an average of about 118 pages of transcripts per day. The trial also ran over approximately four years which, from the date of opening to final closing submissions, amounted to 420 trial days. This is not to mention the 1,522 exhibits that the parties tendered into evidence, many of which were large documents.

Furthermore, in a still controversial decision, the complex Taylor trial was the only SCSL case to be moved thousands of miles away from the seat of the tribunal in West Africa to the heart of Europe. Even in The Hague, the self-styled "legal capital of the world," Taylor's trial posed serious logistical difficulties which, all things considered, were handled well by the tribunal. The main part of the case was initially heard in a courtroom leased from the International Criminal Court (ICC), and once that tribunal had its own cases, the SCSL was forced to relocate to the premises of the Special Tribunal for Lebanon.

Fourth, another factor that may have contributed to some of the delay in the issuance of the trial judgment may be the preoccupations of some of the judges of Trial Chamber II. They are all reasonably expected to be fully engaged upon final deliberations in the Taylor case at this stage. But Judge Teresa Doherty traveled to Freetown in July 2011 to preside over five distracting and relatively minor contempt cases involving witness tampering. Whereas Judge Julia Sebutinde was seeking a judicial appointment by UN member states to the bench of the International Court of Justice (ICJ). She was finally elected on December 13, 2011.

While a chronic problem of tribunal completion strategies is staff and judicial flight for better opportunities elsewhere, and even though it is an impressive achievement that Judge Sebutinde has now become the first African woman to be elected to the bench of the ICJ, for the Taylor case, her election may raise some concerns regarding the appropriate role of judges in war crimes trials held in temporary tribunals. As ICJ judges were supposed to take office on February 6, 2012, her election seemed to suggest that Trial Chamber II was close to issuing judgment in the Taylor case since she would either have to complete her duties at the SCSL by early February 2012, or resign and hand over to the alternate (fourth) judge who also sat throughout the trial (Judge Malick Sow).

From the SCSL perspective, which Judge Sebutinde has served with professionalism and fierce independence since she was sworn in on January 15, 2005, the tribunal's statute (Article 12(4)) and rules of procedure and evidence (Rule 15(C)) anticipate that, if a judge is unable to continue with the trial, the judge may withdraw voluntarily. The President of the SCSL may then assign the alternate judge to serve in her place. This will not necessarily cause disruption in this trial, since the alternate (Judge Sow) is already required by the rules and would have been present for all deliberations carried out so far (pursuant to Rule 16bis(C)). The difference, once the president assigns the alternate judge, would be that he would acquire voting power and play a role in determining the guilt or innocence of the accused.

By all indications, based on what is known publicly, Judge Sebutinde has not yet withdrawn or resigned from Trial Chamber II. Although the other four newly elected judges took office at the ICJ in early February as scheduled, she has been conspicuously absent from their number. Presumably, after having sat through the lengthy Taylor trial, she wished to be part of the final deliberations in that historic trial over which she presided during the prosecution's opening statement in June 2007. That participation would obviously end were she to depart at this stage.

From the perspective of the ICJ, a legal issue appears to arise. Article 16(1) of the Statute of the ICJ stipulates that "[n]o member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature." That article speaks for itself. It basically focuses on

prohibiting individuals from exercising political, administrative or professional functions elsewhere while at the same time occupying a position on the ICJ bench.

For this reason, the ICJ would likely have had to permit her to complete her duties on the Taylor case. Such permission could be open ended or for a specified period, for example, until the verdict is rendered. Viewed from the prism of the SCSL, assuming her pending judicial post later may not necessarily raise concerns. Firstly, the SCSL explicitly envisaged, at least initially, that some of the tribunal's (appeals) judges would serve in a part-time capacity (which, by implication, suggests that they would be holding other positions elsewhere). Though Judge Sebutinde is a trial judge, it would not be a stretch to argue that a similar possibility should be retained to permit participation and the conclusion of the tribunal's last trial.

Secondly, if this argument is correct, there would appear to be little cause for concern given Judge Sebutinde's professionalism and the fact that, if there is any doubt about compliance with Article 16, the issue would be resolved by decision of the ICJ. That said, some observers may wonder what the consequence of pressure to swiftly issue the judgment would now be going forward. Could it, for example, lead to a rush to final judgment that could be detrimental to Taylor's interests due to Judge Sebutinde's apparent dedication to finishing her work on the trial before taking up her nine-year judicial appointment at the ICJ?

This also raises the related issue whether, if she were to stay on to participate in the final deliberations, she would necessarily have to be present for sentencing judgment, in the event of Taylor's conviction. While this will obviously not be an issue if the verdict is an acquittal, it appears that there is no explicit provision in the SCSL statute or rules of procedure covering such an eventuality. Still, it would seem to be implied that, as a matter of principle and basic procedural fairness, she is probably prohibited from playing a role in deciding guilt only to relinquish the subsequent stage of the criminal justice process (i.e. sentencing, which again is only in issue, if the final outcome is not an acquittal).

Looking ahead, as the chamber continues to deliberate, whatever decision is taken to resolve the Trial Chamber's composition during this final stage, the SCSL should consider announcing a firm date for the Taylor trial judgment. More importantly, given that the accused as well as Sierra Leoneans and the international public are all watching, it should be sure that its timeline is realistic and complied with once notified to the world. It is in this way that the Court can bring its last trial to closure with the admiration and respect of Sierra Leoneans and the international community.

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The New Times (Rwanda)
Friday, 24 February 2012

ICTR Refers Another Genocide Suspect to Local Courts

By James Karuhanga and Edmund Kagire,

Prosecutors in Kigali yesterday welcomed a decision by the Tanzania-based International Criminal Tribunal for Rwanda (ICTR) to defer the case against Fulgence Kayishema to Rwanda.

The suspect is still at large.

On Wednesday, the Tribunal ruled that in case he is arrested, he should be returned to Rwanda to face trial. Kayishema is the former head of the judicial police in Kibuye.

The court order came after the Prosecution convinced the tribunal that the fugitive would get a fair trial since Rwanda has made the presumption of innocence part of its statutory criminal law, and that the accused would be detained in conditions that comply with required international standards.

"The referral of this case shall not have the effect of revoking the previous orders and decisions of this Tribunal in this case, including any protective measures for witnesses previously imposed," ruled the tribunal.

It therefore ordered the ICTR Prosecution to hand over to the Prosecutor General of Rwanda, "as soon as possible and not later than 30 days after this decision has become final, the material supporting the indictment against the accused and all other appropriate evidentiary material in the possession of the Prosecution".

John Bosco Siboyintore, the head of the Genocide Fugitives Tracking Unit (GFTU), yesterday told The New Times:

"We are very happy for the development after the referral of Jean Uwinkindi (another top Genocide suspect)."

Last year, the ICTR referred the first suspect, Uwinkindi, to Rwanda for trial.

"Kayishema Fulgence is still at large but at least a ruling has been made on which country will handle his case once he is arrested; in this regard the High Court of Rwanda," said Siboyintore, who is also a national prosecutor.

"This emphasises the trust that the tribunal has in our domestic jurisdiction in dispensing justice fairly. It will be a legal precedent for other countries to extradite Genocide fugitives to be tried in Rwanda, and have less burden and financial constraints to try them in Europe."

Siboyintore noted that it ws "extremely expensive" to have the cases tried outside Rwanda seeing that in some countries where trials have taken place, it took the countries "millions of dollars."

"We are very happy with this ruling and my appeal to both Rwandans and foreigners is to give us information leading to his arrest, as there is a US$5 million bounty on his head by the US Government to whoever will give valuable information that will lead to his arrest," Siboyintore added.

In another case, the defence for former Rwandan Planning Minister Augustin Ngirabatware on Wednesday closed its case after calling 35 witnesses before the ICTR. His trial started on September 22, 2009.

Uwinkindi transfer delays

Meanwhile, a pending decision by the Appeals Chamber of the (ICTR is delaying the transfer of Genocide suspect Jean Uwikindi, which was expected to take place this week.

Uwinkindi last month petitioned the tribunal to reconsider its decision to refer his case to Rwanda, which saw the chamber place an interim order on January 26 delaying his transfer.

Uwinkindi's lawyers want him to remain in the ICTR custody until an operational monitoring mechanism by the African Commission on Human and People's Rights (ACHPR), as previously ordered by Trial Chamber, is put in place.

But the ICTR Prosecutor, Hassan Boubacar Jallow, asked the chamber to reject the application saying it was procedurally and substantively flawed.

The transfer was expected to take place not later than yesterday but, according to Roland Amoussouga, the ICTR Spokesperson, the transfer has again been delayed pending the decision of the appeals chamber.

"As you might be aware, Uwinkindi filed an application to review the decision of referral back to Rwanda. An interim order was put in place halting the transfer until such a time when the chamber has looked into the concerns raised by his lawyers.

"We are all waiting for the appeals chamber to pronounce itself on what next. In principle, this is the first time ever for such a development to take place at the ICTR. This is something that cannot be rushed until everything is looked into," Amoussouga told The New Times.

Amoussouga said that when the Chamber pronounces itself, the ICTR registrar will go ahead to file for a transfer from the ICTR custody.

"This is a judicial matter subject to recourses. Even someone who has been sentenced to life or death is given an opportunity to ask the court to review the final ruling and reconsider where possible," he said.

The former clergyman was born in 1961 in the former Kivumu commune, Kibuye prefecture. He is charged with genocide, conspiracy to commit genocide, crimes against humanity and extermination, according to the ICTR indictment.

A decision authorising the transfer of Uwinkindi's case had been confirmed by the Appeals Chamber on December 16, 2011, after he challenged an earlier ruling.

ICTR Prosecutor Jallow said Uwinkindi failed to demonstrate any exceptional circumstances meriting reconsideration of the Chamber's decision.

He had expressed confidence that the Registrar would meet the deadline for the transfer, but is still remains unclear when Uwinkindi will be transferred to Kigali.

In an interview with The New Times, the Spokesperson of the National Public Prosecution Authority, Alain Mukularinda, said the delay was unexpected.

"We were informed that the transfer was halted because of the application by Uwinkindi himself and other people who insisted on issues of monitoring before the transfer is made."

"We are awaiting the Judges' decision but, otherwise, we are ready. We expect the process not to take long," he said.

However, the president of Ibuka, the umbrella group for Genocide survivors, Jean Pierre Dusingizemungu, said the latest twist is an attempt to delay justice.

"We are not surprised. There are people who will always do their best to halt such a process, including revisionists and Genocide deniers.

"It's a matter of time before justice takes its course. We have seen this happen in the past, but the case in point is the deportation of Léon Mugesera," he said.

Jean Uwinkindi was arrested in Uganda in June 2010 on counts of genocide, conspiracy to commit genocide and extermination as a crime against humanity.

He is alleged to have led several groups of armed killers targeting Tutsi civilians in multiple attacks that spanned the 100 days of the genocide between April and July 1994.

At that time, Uwinkindi was pastor in charge of the Pentecostal Church of Kayenzi in Nyamata, south east of Kigali.

Closely aligned with the extremist wing of the MRND party, Uwinkindi is alleged to have sought the assistance of gendarmes and the ex-FAR to exterminate the local Tutsi population.

He later fled in July 1994, after 2,000 corpses were discovered near his church.

Concord Monitor
Friday, 24 February 2012

1994 genocide trial under way

Woman accused of lying about her role

Before Beatrice Munyenyezi came to the United States, gained citizenship and raised her three daughters in Manchester, she picked victims to be slaughtered at a roadblock she worked during the Rwandan genocide, according to federal prosecutors.

Assistant U.S. Attorney John Capin said yesterday that genocide victims and participants have identified Munyenyezi and described her as "encouraging killers to kill and rapists to rape."

But Munyenyezi, who is charged with lying on immigration papers about the role she played in the 1994 genocide, took no part in the violence, according to her attorneys. They said witnesses who claim otherwise are lying - either for self-gain or because of pressure exerted by the Rwandan government.

"They come from a culture where the government . . . has used the genocide as a tool of oppression," defense attorney Mark Howard said, addressing jurors at the start of Munyenyezi's trial in U.S. District Court in Concord. He said it is a crime in Rwanda to deny the genocide, and Rwandans risk prosecution if they don't comply with investigators.

As for convicted genocide participants, they can get their life sentences shortened to 20 years if they turn in other participants, Howard said.

The witnesses brought from Rwandan prison to testify against Munyenyezi "have been in 17 years now," he said. "They're out in three more years. Just think about that."

Munyenyezi, who has been held without bail since her arrest in 2010, is being tried on charges that she lied about her role in the genocide to obtain U.S. citizenship in 2003.

While she isn't charged with committing genocide, the allegations are central to the case: To prove Munyenyezi lied about playing a role in the genocide, prosecutors have to show she was involved in it.

Capin said Munyenyezi was an active member of the MRND, the political party in power at the time of the genocide, which began after a plane carrying the Rwandan president was shot down in April 1994.

The president was Hutu, as were most members of the MRND. After his assassination, Hutu extremists began targeting and killing Tutsis, the country's other major ethnic group. An estimated 500,000 to 1 million Tutsis and moderate Hutus were killed during the 100 days of genocide, which ended in July 1994.

During that period, Munyenyezi worked a roadblock outside a hotel in Butare owned by her husband's family and "personally identified Tutsis who should be killed," Capin said. He said she dictated the details of murders - "who got killed, when they got killed, where they got killed" - and checked up on killing squads.

"She stayed at that roadblock to the bitter end," Capin said.

But Munyenyezi, then 24, was pregnant with twins at the time of the genocide, Howard said. He said Munyenyezi stayed in her hotel and wasn't involved in manning roadblocks.

Howard also said Munyenyezi, who came to the U.S. as a refugee in 1998, was never implicated in the cases against her husband, Arsene Shalom Ntahobali, and her mother-in-law, a government minister in the MRND party. Both were found guilty of genocide and crimes against humanity by the International Criminal Tribunal for Rwanda.

Ntahobali's crimes included killing and raping Tutsis at the roadblock outside his hotel, which "earned the reputation of being one of the most terrifying roadblocks in Butare," according to the tribunal, which sentenced Ntahobali and his mother to life in prison.

The prosecutions of Ntahobali and his mother took 10 years, 500 witnesses and 600 days of trial, but Munyenyezi's name "was never mentioned once," Howard said. "By one witness. . . . Never identified her, never even hinted the wife of Shalom was involved."

He also said the first witness against Munyenyezi, Esperance Kayange, had testified against Ntahobali but never mentioned his wife until March 2011, "when American agents show up asking about the wife of Shalom."

Kayange testified yesterday she saw Munyenyezi with a gun at the hotel roadblock: "I saw one woman," she said through an interpreter. "It's Beatrice."

Kayange, who was 20 at the time of the genocide, said Munyenyezi also came twice to the nearby school where she had been hiding after her mother and 11 of her 12 siblings were killed.

Kayange said the genocide in her commune began with Hutus burning down Tutsi homes and putting up roadblocks. They then called all the men to a roadblock and killed them, she said.

The women and children had gathered in the home of her stepfather, Kayange said, but then the Hutus came to kill them.

"They stood at the entrance. They called out . . . 'Are you awake?' And the people said, 'Yes, we are awake. We are here,' " Kayange said.

The Hutus made the people in the house line up outside, and "they were slaughtering them," she said. "Cutting them to pieces." The Hutus used machetes, hammers and clubs, she said.

Kayange had been in that line, but a man in the militia came and picked her out of it, saying he wanted someone to marry his son, she said.

The man took her away, but two other men from the militia later led her back to the house. Everyone except one baby had been killed, Kayange said.

She said she managed to slip away from the two men and went and hid in a field. Later that night, she went to find her older sister, who lived in a different commune.

While Kayange was with her sister, they were approached by men from the militia. They led Kayange into her sister's house and laid her on a bed.

Pointing to her right temple, Kayange said one man put a hammer to her head and told her that if she moved, "they would kill me."

As another man held her foot, they raped her. "There were 16 in number, and they all raped me, one after the other," Kayange said.

They left after they finished, and Kayange said she then made her way to the school, from where she could see the roadblock set up outside Munyenyezi's hotel.

She will continue testifying today. The trial is expected to last four to six weeks, with a number of witnesses coming from Rwanda. If convicted, Munyenyezi faces deportation and a possible life sentence in Rwanda.

Foreign Policy Magazine
Wednesday, 22 February 2012

Justice for Assad can wait

Posted By David Bosco

A notable feature of the international response to Syria has been the limited discussion of employing the tools of international justice, namely the International Criminal Court (ICC). Because Syria is not an ICC member, granting the court jurisdiction would require the UN Security Council to act, as it did in Libya and Sudan. Activist groups such as Human Rights Watch have supported a referral, and the UN's top human rights official called for an ICC investigation, but diplomacy on the justice issue has been subdued.

This no doubt reflects the current impossibility of persauding Russia and China to accept an ICC investigation. But my sense is that it reflects something else as well: a Western reconsideration of the benefits of deploying international justice in the midst of conflict. Both the Libya and the Sudan referrals resulted in indictments for the respective head of state and senior ministers. And in both cases, the benefits have been murky, while the costs in terms of diplomatic flexibility have been significant. With the possibility of exile for Assad still circulating, I don't sense that the West is eager to foreclose any options.

There's nothing in this more cautious approach that is necessarily destructive of the push for international accountability. Once the Syria conflict has played out, the Council or, conceivably, the Arab League can initiate processes for investigating and meteing out punishment. What this staggered approach does undermine is the notion that justice must be a tool for managing ongoing conflict.

I've never understood why so many international justice advocates and human rights professionals are fiercely attached to the vision of justice as a tool for managing conflict in the first place. It's as if justice for its own sake is not enough; it must also be shown that pursuing justice always has salutary political and policy consequences: that it always deters atrocities and never backs indictees into a bloody corner; that it "delegitimizes" those indicted and never impedes diplomatic resolutions. These claims are all but unverifiable empirically. They are more expressions of faith than analysis. What's more, they are oddly consequentialist positions for folks who pride themselves on principled activism.

More: Astute reader Don Kraus points to another reason that the United States might be wary of referring Syria to the ICC. "The US will be reluctant to pursue this option because a Syrian referral would include the Golan Heights, which would put territory under Israeli control within the Court’s jurisdiction."