SPECIAL COURT FOR SIERRA LEONE
OUTREACH AND PUBLIC AFFAIRS OFFICE

African Minerals dredge at work, constructing a jetty at Tagrin, Lungi. Credit: Lawrence Sesay, CITS

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:
Tuesday, 25 January 2011

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

Local News

International News

Concord Times
Tuesday, 25 January 2011

Taylor's lawyers will not file final trial briefs...

By Alpha Sesay

Charles Taylor's defense team will not file any final trial briefs until several outstanding motions before the Trial and Appeals Chamber are disposed of, the former Liberian president's lead defense counsel, Courtenay Griffiths, told the Special Court for Sierra Leone judges at a status conference Thursday in The Hague.

The status conference had been convened to give defense lawyers the opportunity to explain why they had failed to file their final trial brief on the January 14, 2011 deadline that had been ordered by the judges, and also why they had refused to accept service of the prosecution's final trial brief.

"Mr. Taylor has provided us with written instructions that we are not to file a final trial brief until such a time as decisions are reached on all outstanding motions and appeals," Mr. Griffiths told the court yesterday at the opening of the status conference.

"This is not meant to be a delaying tactic. It is a point, in our submission, of fundamental principle," Mr. Griffiths added.

When asked by the Presiding Judge of the Trial Chamber, Justice Teresa Doherty, whether it is the intention of the defense team to submit a final trial brief, Mr. Griffiths responded that "we do intend to file a final brief, circumstances permitting."

Mr. Griffiths explained that at the time that the Court made an order for final briefs to be submitted by all parties on January 14, 2011, certain matters which must be addressed by the Court had not arisen. These matters, Mr. Griffiths said, are important in order to decide "on all the issues to include in [the defense] final brief."

"At the time the order was made, we did not know, for example, about the WikiLeaks cables which implicated the very integrity of the Prosecution and the Court," Mr. Griffiths said.

On why the defense had refused to accept service of the prosecution's final brief, Mr. Griffiths told the court, "We do not want to be accused in due course of tailoring our final brief, no pun intended, based on the contents of the Prosecution's submissions. We want our submissions to stand alone in their own right."

When asked to respond to the submissions made by the defense, Chief Prosecutor Brenda J. Hollis told the Court that the "accused has made a deliberate election not to file a final trial brief."

Ms. Hollis added that to allow the accused to file final briefs only when conditions are appropriate for him will, "in effect, let him sit in the middle of the courtroom and run the trial."

"He has no such right. No accused has such a right," Ms. Hollis added.

Mr. Griffiths on his part responded, "Mr. Taylor is not seeking to control these proceedings. He is seeking, instead, to get a fair trial."

The judges adjourned briefly to deliberate on the matter. When court resumed, the judges issued a majority ruling, with Justice Julia Sebutinde dissenting.

In the ruling, which did not say in clear terms whether and when the defense were to file their final brief, the judges, by majority said, "The majority of the Trial Chamber, Justice Sebutinde dissenting, consider that they have not heard submissions that causes the Trial Chamber to review or amend the original orders rendered on 22 October 2010."

Contd. page 8

Taylor's lawyers will not file final trial briefs...

From page 5

The order of October 22, 2010 required all parties to submit final trial briefs by January 14, 2011.

The judges added, "The outstanding appeals and motions referred to were filed after the Defence closed its case, at a time when the Trial Chamber expected that the Defence would be preparing its final brief."

"The decisions on outstanding motions and appeals may call for further orders to be made in relation to the presentation of the Defence case and in the interests of a fair trial. But the Trial Chamber emphasises that any such orders will be made by the Trial Chamber and not by Mr Taylor. Mr Taylor does not have the option of obeying or disobeying court orders as he sees fit," the judges added.

In her dissenting opinion, Justice Sebutinde said, "For me, it would not be fair to ask the defendant to wrap up his defence when there are issues on the table of the judges that we have not been able to deal with yet. In other words, the ball is in the court - is in the court of the Court, so to speak.

"In my view, it is not unreasonable for Mr Taylor to say to the judges, 'I will file a trial brief as soon as you give me the judgments or the decisions that I'm waiting for.' On the other hand, what we are saying to Mr Taylor is, 'File a piecemeal final brief in your defence,'" she added.

The Presiding Judge, Justice Doherty, then adjourned proceedings until February 8, 2011 when closing arguments will commence.

Voice of America
Monday, 24 January 2011

Nigeria Wants UN Backing for Military Intervention in Ivory Coast

Scott Stearns

Photo: Reuters

Incumbent Ivorian President Laurent Gbagbo (file photo)

Nigeria wants United Nations backing for a regional intervention force to remove Ivory Coast's incumbent president in favor of the internationally-recognized winner of November's vote.

Nigerian Foreign Minister Odein Ajumogobia says the threat by West African leaders to use force to remove incumbent Ivorian President Laurent Gbagbo needs "unequivocal international support" from the U.N. Security Council.

In a column in Nigeria's *This Day* newspaper, Ajumogobia said it is clear that Mr. Gbagbo is determined to defy the international community and treat its opinions with disdain. He said the Ivorian president must not be allowed to prevail.

The Economic Community of West African States, the European Union, the United Nations, the African Union and the United States recognize former prime minister Alassane Ouattara as the rightful winner of Ivory Coast's presidential election.

But Mr. Gbagbo is refusing to yield power because he says he was reelected when the constitutional counsel, which is staffed by many of his allies, annulled enough of Mr. Ouattara's votes to make him the winner.

Mr. Gbagbo's spokesman says the threat of a regional military force is part of an elaborate bluff because West African leaders have no legal standing to raise such a force against Mr. Gbagbo's government.

Salamatu Suleiman is a Nigerian State Minister for Foreign Affairs. She says Nigerian President Goodluck Jonathan's threat of force as head of the regional ECOWAS alliance is not a bluff. Suleiman says regional leaders are well aware that Mr. Gbagbo is stalling for time.

"Mr. President, as chairman of ECOWAS, and indeed the entire ECOWAS are firmly on top of that," said Suleiman. "They are aware of Gbagbo's tactics. They have given him the leeway, sent many, many diplomatic missions to speak with him, and, if that fails, the option of military force is not ruled out."

In his newspaper column, foreign minister Ajumogobia said Mr. Gbagbo "must be made to understand that there is a very real prospect of overwhelming military capability bearing down on him and his cohorts." Ajumogobia said that force could include a naval blockade to enforce international sanctions.

The Nigerian foreign minister said it is unfortunate that Russia and Ghana have come out against military action because, he said, the impunity that Mr. Gbagbo seeks is a challenge to the international community.

Ajumogobia said the political crisis in Ivory Coast is likely to disrupt democracy and create a dangerous precedent in Africa, where 20 presidential elections are scheduled during the next 18 months.

Bembatrial.org
Monday, 24 January 2011

Bemba trial hinges on command responsibility

By Lisa Clifford

Dear readers – Below find a report written by Lisa Clifford, a journalist and commentator specialising in issues of justice and human rights in central Africa. The views and opinions expressed here do not necessarily reflect the views and opinions of the Open Society Justice Initiative.

"If you unleash the dogs of war you have to put in place control mechanisms to prevent the dogs of war getting out of control."

That's how lawyer Stephen Kay describes the doctrine of command responsibility, the idea that leaders both military and civilian are responsible for the acts of their subordinates.

The trial of Jean-Pierre Bemba – accused of failing to control his troops in the Central African Republic – is the International Criminal Court's (ICC's) first-ever command responsibility case, but the concept of commanders being held responsible for crimes committed by others is nothing new in international law.

Sun Tzu's the Art of War from the sixth century said that commanders should ensure their soldiers behave in a civilised manner. At the Nuremberg and Tokyo tribunals following the Second World War, German and Japanese officials were also charged under the doctrine. One of the best known cases was the trial of Tomoyuki Yamashita, a Japanese general convicted of commanding troops responsible for atrocities in the Philippines.

After a long hiatus, the United Nations tribunals tasked with prosecuting those responsible for war crimes in the former Yugoslavia and Rwanda continued the tradition, charging numerous leaders – military and civilian – with failing to control those under their command.

But such cases can be difficult to prove.

Prosecutors will have to show the chain of command linking Bemba to those who committed crimes and prove that through the chain of command he could have controlled them.

Specifically, they must first establish that crimes actually occurred. Then they must prove that those committing them were subordinates and that Bemba knew and constantly failed to act or punish those responsible.

Ambiguities in the chain of command are one of the many challenges for prosecutors, according to lawyer Guénaël Mettraux, who has represented defendants charged with failing to control their subordinates in the wars in the former Yugoslavia.

"If you take the beginning of the [Bosnian] war, you did not have an army that was there to be taken over in Bosnia. You had to create it through slow centralisation of bodies into one. There were periods of time where there were questions about what chain of command was functioning and under whose authority."

Bemba's lawyers will argue that the Movement for the Liberation of Congo (MLC) soldiers were under Ange- Félix Patassé's command in CAR and obeyed his orders, not those of Bemba who remained largely in the DRC during the campaign. They will also likely say his troops were trained on human rights law, were aware of the MLC's code of conduct and were disciplined if they committed crimes.

Showing reasonable measures have been taken to prevent crimes is one common defence in such cases.

“Bemba can say he disciplined soldiers, that he told them not to do it,” said William Schabas, Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, where he also holds the chair in human rights law.

“It’s just like if I am driving car, and I get it serviced every three months, and someone tampers with it and the brakes fail, I’m not responsible if someone got killed as a result, because I can demonstrate that I exercised due diligence. Bemba will have to do that.”

Many international trials take place years after the crimes were committed, making the prosecution of individual culprits unrealistic. It is in these cases that the likes of David Crane, the founding prosecutor of the UN-backed Special Court for Sierra Leone, turn to a command responsibility charge.

“You’d never find these individuals. They are dead. There are very few records. It’s almost impossible,” said Crane. “We could not conduct a lot of international criminal law without command responsibility.”

Crane indicted and prosecuted commanders from the three warring factions in Sierra Leone’s civil war, as well as Charles Taylor, the former president of Liberia. Many were in leadership positions but not physically present when atrocities occurred.

ICC prosecutor Luis Moreno-Ocampo said in his opening statement on November 22 that the case against Bemba would influence the behaviour of military commanders on the ground and warned that the ICC would continue to hold them responsible for crimes committed by their soldiers.

But some are concerned that the Court’s legal tentacles have so far reached no further than Africa, despite allegations of unlawful activity by western leaders in places like Gaza, Iraq, and Afghanistan.

This isn’t going over well among many Africans and international commentators like Schabas. “In Africa they are looking around and saying is this court just about the good guys in the north preaching to us about how to behave,” he said. “Americans are allowing torture authorised by their own leaders to go unpunished.”

The ICC recently warned North Korea that it was conducting a preliminary examination of the recent attacks on Yeonpyeong Island in South Korea and the sinking earlier this year of a South Korean warship. It said in December it is monitoring the situation in Ivory Coast.

Crane agrees that politics are a factor in prosecutions. “President Obama has said we need to let the past be the past and move forward. I remember Charles Taylor making the same comment after I indicted him – that we need to stop resurrecting the past and move forward.”

This is cause for concern. “Are we deciding to develop a double standard?” said Crane. “As soon as the law is unfairly applied, and perceived to be unfairly applied, then the law itself is in jeopardy.”

Reuters
Tuesday, 25 January 2011

FACTBOX-Kenya's attempts to prevent Hague trials

Jan 25 (Reuters) - Kenya is seeking to block trials of key suspects at The Hague for their role in the east African country's deadly post-election violence. Analyst see the moves as part of a wider plan to try and control the outcome of the 2012 presidential vote.

* The International Criminal Court prosecutor on Dec. 15 named three cabinet ministers and a former police chief among six suspects behind the post-election violence.

* Prominent among the six suspects were finance minister and Deputy Prime Minister Uhuru Kenyatta, and William Ruto, the higher education minister who has been suspended to fight a corruption case.

* Lawmakers passed a motion on Dec. 22 urging Kenya to withdraw from the Rome Statute that established the ICC, in a bid to block the trials.

* Prime Minister Raila Odinga said on Dec. 23 he and the government opposed leaving the ICC process and that trials of post-election violence suspects will go ahead at The Hague.

* The ICC throws out an application by Ruto that sought to block the court's prosecutor Luis Moreno-Ocampo from summoning him to The Hague as a suspect.

* Vice President Kalonzo Musyoka has visited South Africa, Uganda and Malawi to lobby for support in persuading The Hague to defer the cases to Kenya.

* Nigeria and Ethiopia are next in line for visits ahead of the African Union Summit in Addis Ababa this week.

* Kenya expects the AU to debate the issue and push for a local tribunal in Nairobi to try the suspects.

* President Mwai Kibaki has said he wants the ICC suspects to be tried by a local tribunal.

* Members of parliament and government are expected to draft a new bill to establish a special tribunal to prosecute perpetrators of the post-election violence.

* Parliament is due to debate the bill to set up the local tribunal in early February in a bid to have it in place before the ICC holds hearings to confirm or reject the cases against its six suspects.

* In 2008, Kenya's parliament failed to come up with a local tribunal to try the perpetrators.

* Following the failure, Moreno-Ocampo promised to use the Kenyan cases as an example to other countries and politicians.

(Reporting by James Macharia; Editing by Giles Elgood)

Hirondelle New Agency
Monday, 24 January 2011

Survivor claims Ndahimana was not present during the attack

A survivor of massacres at a church in Western Rwanda Monday told the International Criminal Tribunal for Rwanda (ICTR) that former mayor, Grégoire Ndahimana, was not present when Tutsi refugees were attacked and killed at Nyange Parish in April 1994.

"I did not see Ndahimana during the attack," said defence witness code-named ND-7 to protect her identity, referring to April 15, 1994, when an extensive attack was launched at the parish. She was testifying for Ndahimana, ex-mayor of Kivumu Commune in Kibuye prefecture.

Examined by defendant's lead counsel Bharat Chadha, the witness, currently living in Rwanda, failed to hold back her tears when accounting the horror she encountered during the attack. The court had to rise for ten minutes to allow her calm down.

On resumption, the witness claimed to have cheated death after escaping to a presbytery room where she remained in hiding until April 17, 1994 when Ndahimana came to the parish and took her alongside 26 other injured survivors to the health centre for treatment.

According to the witness, there had been other attacks, including that of April 16, 1994 when the church at the parish was completed destroyed, killing several other Tutsi refugees, and she did not see Ndahimana around.

Doubting the witness's testimony, Trial Attorney Segun Jegede wanted to know how she could see what was going on at the parish, including the arrival of Ndahimana while she had gone into hiding. However, the witness maintained, "the window was near. We could stand and peep through and see what was happening."

She mentioned other authorities who led the attacks as Fulgence Kayishema, former judicial police inspector of the commune, Telesphore Ndungutse and Anasthase Rushema, both teachers. She also saw Father Athanase Seromba, currently serving life imprisonment, as he was always with authorities and attackers.

The trial continues Tuesday. Ndahimana, who is charged with genocide or complicity in genocide, in the alternative and extermination, as a crime against humanity, allegedly planned the massacres at Nyange Parish jointly with other officials.

FK/NI/ER/GF

Radio Netherlands Worldwide
Thursday, 25 January 2011

Congolese former rebel's case postponed in Rwanda

By Thijs Bouwknegt

Laurent Nkunda's fate has been unclear ever since his arrest two years ago and there is no progress so far in his trial. His lawyer said a Rwandan military court on Monday postponed the hearing of a plea to free the former Congolese rebel chief.

"The clerk's office decided to postpone the hearing sine die because the judge (General Steven Karyango) has been suspended," Aime Bokanga, a lawyer for Nkunda, told AFP.

"We're waiting for a new judge to be appointed. Under Rwandan law he needs to be a general because the person we have brought proceedings against is a general," the lawyer said.

This latest postponement is the fourth since the case was sent to the military courts.

Nkunda's lawyers say General James Kabarebe, former Rwandan army chief of staff who was appointed defence minister in April, is responsible for the "arrest and illegal detention" of their client. In March Rwanda's supreme court ruled that given Kabarebe's military status, it was not competent to hear the plea.

CNDP

Before the former Congolese rebel leader was put under house arrest in Rwanda two years ago, Nkunda led a force of an estimated 4,500 men called the National Congress for the Defence of the People (CNDP). The group purported to protect minority Tutsis in Congo's eastern Kivu provinces but the United Nations and human rights groups say it has uprooted hundreds of thousands people.

The former general ruled his own 'mountain state' from his villa in Kitchanga in North Kivu. Nkunda raised road tolls, taxes on the sale of timber, coltan, gold and other natural treasures. But his small empire collapsed following the restoration of relations between Rwanda and the DRC after two wars and years of trading allegations of aiding each other's rebels.

Nkunda's arrest in January 2009 was key to a deal between the Great Lakes neighbours to end the region's conflicts and ultimately to crush Hutu rebels. Rwandan and Congolese soldiers - including Nkunda's former men - then jointly turned their guns on the Democratic Forces for the Liberation of Rwanda (FDLR), a splinter group of Rwanda's former Interahamwe militia.

Rwanda connection

Laurent Nkunda Batware's life is intertwined with the history of the Tutsi in Rwanda and Congo. Nkunda was born in Congo as one of the sons of thousands of Tutsi's who fled Rwanda's ethnic persecutions in the 1960's. He studied psychology and was a school teacher before he took up arms. In 1993 he joined the Rwandan Patriotic Front's (RPF)rebellion against the Hutu regime in Rwanda. After the 1994 genocide, Nkunda was among the fighters who invaded Congo to rout Hutu extremists.

Nkunda stayed in Congo. He fought along with Laurent Kabila's rebels who overthrew Mobutu Sese Seko in 1997 but shifted sides to a Rwandan-backed militia - the Congolese Rally for Democracy (RCD)- during the country's back-to-back civil wars. He turned down a promotion to 'Général major' in the Congolese army (FARDC) because he believed it supported Hutu rebels. He then retreated with hundreds of his former troops to the forests of Masisi in North Kivu where he was said to have been protecting Congolese Tutsis from genocide.

Atrocities

Although Nkunda fought in both the Rwandan and Congolese conflicts, he first came to widespread notice when he led the brutal repression of an attempted mutiny in Kisangani in 2002, where more than 160 civilians were summarily executed. Two years later, he captured Bukavu, the capital of South-Kivu, where his men allegedly went on a killing spree, torturing and raping civilians. Human Rights Watch also reported that Nkunda's forces killed at least 150 people in Kiwanja in late 2008.

Kinshasa issued an arrest warrant for Nkunda in September 2005, charging him with desertion and war crimes.

The International Criminal Court (ICC) in The Hague has not publicly indicted Nkunda, but has opened investigations into the actions of his militia as the UN has accused his CNDP of serious human rights abuses, including sexual violence and recruitment of child soldiers during his five-year rebellion in eastern Congo.

The CNDP's current leader, Bosco Ntaganda, has been promoted to general in the Congolese army while he is wanted by the ICC for war crimes and crimes against humanity committed in Ituri.

Iloubnan.info
Monday, 24 January 2011

What happens if Lebanon officially disavows the STL and refuses to cooperate?

By Antonin GREGOIRE

The Special Tribunal for Lebanon was officially implemented by the UN resolution 1757 which contains a agreement signed by Lebanon accepting to cooperate with the STL. Anyway, what can happen if the next government decides to cease any cooperation with the UN tribunal, like several opposition members said it would?

Whatever happens in the country or the region, the STL will operate and can not be stopped. The trial will most surely last for several years but it is more likely that no arrest warrant will be issued before the STL reached a final judgement.

If Lebanon refuses to cooperate, the UN Security Council will be required for appropriate action.

Lebanon's "vertical cooperation" with STL

The cooperation between STL and Lebanon is said to be a "vertical model" as described in the STL 1st annual report:

This "vertical model" is divided into two possible sub-models.

The 1st one says that states have to implement by their own means the decisions or acts decided by the international tribunal. According to this model, the local authorities have to "implement investigative or judicial acts of assistance to the requesting international tribunal or court through their own prosecutorial or judicial authorities – if need be, in the presence of officials of the international tribunal or court."

The second model of vertical cooperation is more intrusive: "States authorise once and for all an international tribunal or court to carry out investigative or judicial acts of assistance on their territory without the assistance of their own authorities – except for those acts which, by their nature, require the active cooperation or protection of local enforcement agents, such as searches, execution of arrest warrants."

The model applying to Lebanon is a mix between the two. The government of Lebanon signed a cooperation agreement which is attached to the UN resolution 1757 creating the STL. The prosecutor can carry its investigations without the assistance or the consent of the local authorities.

The Article 4(1) of the Statute provides that "within its jurisdiction, the Tribunal shall [also] have primacy over the national courts of Lebanon".

This means that even if Lebanon decides to carry on its own investigations and trial over Hariri's murder, the STL will still continue its procedures without taking into consideration the Lebanese procedures.

If Lebanon refuses to cooperate, the UN security council may apply sanctions

In case of non compliance to an STL demand, a mechanism in three steps is prepared. This mechanism is compulsory.
“First, the President would consult with the relevant Lebanese authorities with a view to inducing them to cooperate.
"Second, in the event of a persistent refusal to cooperate, the Pre-Trial Judge or the Trial Chamber would make a judicial finding of non-cooperation.
"Third, the President would report this judicial finding to the Security Council for appropriate action."

It is more likely that the UN security council will not try to apply force to Lebanon. The consequences of an international force intervening in Lebanon to force the authorities to cooperate would result in an open disaster for the Middle East. Therefore, it is more likely that the UN security council will apply, if needed, economic sanctions against Lebanon as they did with Iran.

The most frightening prospect would be to see the prosecutor asking the pre-trial judge to issue such warrants to preliminary detain suspects. The prosecutor has this power if he proves that there is a chance that the suspects may conduct new terrorist attacks or try to prevent the STL from operating properly. In that case, it will be up to the Lebanese authorities to arrest the suspects and, if they refuse, the UNSC can apply sanction against Lebanon.

However, the STL will probably not issue such warrants for two reasons. First, Daniel Bellemare and the pre-trial judge Fransen are aware of the consequences such warrants would have on Lebanon.
Second, such procedures enter in direct conflict with the presumption of innocence that the STL has to respect in the sake of its own legitimacy. The presumption of innocence implies that any accused has the right to stand freely before its judges.

Cooperation with other States

Another disposition can change the hostility against the STL and may drive Lebanon into cooperating even if the opposition runs the government.

Collaboration with STL is compulsory to Lebanon but free for other states. The defence office or the prosecutor can ask other states to sign cooperation agreements. For instance, the defence office can ask Syria to give documents that could help the defence of the accused. It is then up to Syria to decide whether they collaborate with the tribunal or not. If they refuse, the defence could loose a valuable document and the chances of the accused to be found guilty may increase. If they accept, both the defence and prosecution may required Syria's assistance and Syria will be considered as having recognised and cooperated with the STL.

The same case can apply to any country and this disposition will probably result in many surprises:
The US officially agreed to collaborate with the prosecutor but in a recent document revealed by WikiLeaks, the prosecutor Daniel Bellemare was complaining of the lack of cooperation from the US who did not answer his demands.

It is also most likely that the other states are going to be asked for collaboration, either by the prosecutor or by the defence or by both: Syria, Israel, Iran, US, UK etc. The answers from these states will weight heavily on the STL legitimacy and recognition.

Middle East Monitor
Monday, 24 January 2011
http://www.middleeastmonitor.org.uk/articles

South African government faces challenges to arrest those accused of war crimes

By Firoz Osman

Has South Africa joined the United States of America and European countries in providing Israel with "geopolitical insulation"? This question arises against the backdrop of an intense week during which international media attention was focused on whether a senior Israeli politician faced the prospect of being arrested upon her travel to South Africa. It also arises because of a perception that the visit by Tzipi Livni had been planned months ago and would only proceed without hitch if the Pretoria government had given it a green light.

The (now cancelled) visit by Israel's leader of the opposition and former foreign minister led to charges for war crimes and crimes against humanity being laid against Livni before the National Director of Public Prosecutions. This is unprecedented in South African history and presents numerous challenges to the judiciary of the country.

South Africa averted an awkward predicament a few months ago with the cancellation of a visit by Sudan's President Omar Bashir, who stands charged by the International Criminal Court for war crimes. If Bashir had landed in South Africa, the government would have been obliged to arrest him.

There was a huge outcry by civil rights organisations when South Africa denied a visa to the Dalai Lama, fearing that during his visit he would expose China's human rights abuses in Tibet. In that case, trade and economic considerations outweighed concern over China's human rights abuses.

Britain, like South Africa a signatory to the Rome Statute of the International Criminal Court, acted to arrest a retired Israeli general, Doron Almog in 2005. He avoided arrest by returning to Israel without leaving the plane that had landed him in London after he was tipped off that an arrest warrant had been issued for him. In September 2009, British activists sought to have Israel's Defence Minister Ehud Barak arrested over his role in the Gaza war, but a court denied the request on the grounds of diplomatic immunity. The Zionist state's Strategic Affairs Minister, Moshe Ya'alon, was also advised by a special inter-departmental team working with ministers to pull out of a planned trip to the UK; then Livni cancelled her trip to Britain for fear of arrest later in the same year. Shamefully, the British government is now changing the law on universal jurisdiction to allow Israelis accused of war crimes to visit Britain without fear of arrest, the power for which will now lie with a political appointee instead of a local magistrate.

It was the ratification of the Rome Statute in July 1998 that established for the first time a permanent criminal court for all persons in any country guilty of the most heinous crimes. This court was not limited by the diplomatic immunity or special status of these individuals no matter what their stature was and was not limited to the nation in which the perpetrator lived, even if his country of domicile was not a party to the agreement. The statute came into force in July 2002 when the ICC was established to try individuals for crimes relating to genocide, crimes of aggression, crimes against humanity and war crimes. The Rome Statute is linked explicitly to the Fourth Geneva Convention relating to its definition and application of the term "war crimes". The Geneva Convention in itself was also ratified to counter the horrors witnessed during the World Wars, arresting and prosecuting Nazi war criminals anywhere in the world.

The UN's Goldstone Report established very serious breaches of the Fourth Geneva Convention by the Israel Defence Forces and the Israeli government during so-called "Operation Cast Lead" in Gaza in late 2008-early 2009.

"The conduct of the Israeli armed forces constitute grave breaches of the Fourth Geneva Convention in respect of wilful killing and wilfully causing great suffering to protected persons and as such give rise to individual criminal responsibility," Goldstone reported. " During the first four minutes of Israel's devastating winter assault on the Gaza Strip, launched 27 December 2008, over 60 warplanes struck 50 targets, ultimately killing and injuring hundreds by midnight."

Further, "Among 70 targets hit on 1 January 2009 was a police command centre in Rafah. No one was hurt in that airstrike, but 248 members of the Gaza police were killed during Israel's overall assault."

UN Special Rapporteur Professor Richard Falk gave a briefing on universal jurisdiction following Tzipi Livni's cancellation of her visit to Britain. It was the weakness of international institutions that necessitated the idea of universal jurisdiction in upholding international criminal law. "The idea of Nuremberg after World War Two," said Prof. Falk, "was that crimes against the peace, crimes against humanity and war crimes are also offences against the whole of international society. There is an interest on the part of all states in trying to implement those norms of international criminal law."

If the ICC were to apply the law only to prosecute Charles Taylor (Liberia) or Omar Bashir (Sudan), Saddam Hussein (Iraq) or Slobodan Milosovic (Slovenia), he added, "then you discredit, in a fundamental way, the rule of law which really does depend on equals being treated equally."

In the Israel-Palestine context, continued the UN Rapporteur, "universal jurisdiction is part of the struggle against impunity for the Israeli military and the country's political leaders. That impunity has been possible both because Israel itself doesn't impose accountability on those who perpetrate violations of international criminal law and because the US, and to some extent European countries, have given a geopolitical insulation to Israel in relation to its responsibilities as a sovereign state."

Part of this issue of impunity and accountability was also raised by the Goldstone Report and by the international law panel appointed after the Mavi Marmara flotilla incident of 31 May 2010; all of these issues converge to suggest that at this time the most effective way of implementing international law is both through the activism of civil society and through national legal institutions.

The Rome Statute says that all nations "shall be under the obligation to search for persons alleged to have committed or to have ordered to be committed (war crimes) and shall bring such persons regardless of their nationality before its own courts".

There are many credible reports and organisations that attest to the fact that war crimes and crimes against humanity have been committed against the Palestinians. If these criminals are to be allowed to enter South Africa without fear of prosecution, then we will be indirectly complicit in perpetuating other atrocities comparable to Lebanon, Gaza and the Mavi Marmara.

Dr Firoz Osman is the secretary-general of the Media Review Network, an advocacy group based in Tshwane, Republic of South Africa