

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



**PRESS CLIPPINGS**

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

**as at:**

Friday, 25 September 2009

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

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## The Senator

Friday, 25 September 2009

### Taylor Did not Order The RUF To Attack Guinea

*Charles Taylor today denied prosecution allegations that he ordered Sierra Leonean rebels to attack Guinea in 2000 to oust its then president, Lansana Conte, whom Mr. Taylor accused of supporting fighters to attack his own government in Liberia.*

"No I did not, no I did not," the accused former Liberian president kept repeating as he answered questions about whether he sent Sierra Leonean rebel forces to attack Guinea. "We were being attacked by LURD [Liberians United for Reconciliation and Democracy] from Guinea but I was equally busy with other issues that were not war-like."

"It was in my best interest to attack Guinea but why not use Liberians for that?" Mr. Taylor asked.

Among other things, Mr. Taylor is charged with failing to prevent or punish crimes committed by Sierra Leonean rebel forces alleged to be under his control during the country's 11-year conflict, as well as aiding and abetting the crimes they committed. Today, Mr. Taylor was responding to the evidence of two prosecution witnesses,

Mohamed Marvin Mansaray and Abu Keita, who both had given evidence to the Special Court for Sierra Leone about Mr. Taylor's alleged control of Sierra Leonean rebel forces and the assistance he provided to the rebels in their attacks.

In his March 2008 testimony, Witness Mansaray testified that sometime in July 2000, Revolutionary United Front (RUF) commander Issa Sesay told RUF fighters that Mr. Taylor had given an order for them to attack Guinea. The witness said that Mr. Taylor provided arms and ammunition, including bombs, for the operation.

Witness Mansaray's testimony reinforced an earlier witness's testimony, Abu Keita, who in his January 2008 testimony told the Special Court for Sierra Leone that after the release of UN peacekeepers who were held hostage by RUF rebels in 2000, Mr. Taylor gave orders to the RUF to attack Guinea. The attack, Witness Keita said, was led by an RUF commander called Short Bai Bureh. The witness said that Mr. Taylor gave RUF commander Mr. Sesay a satellite phone and 50 boxes of ammunition. Mr. Taylor today told the judges in his testimony that this never happened.

"Never happened. Oh my dear, it is just too much. It is a blatant lie.

There is no such thing as anybody getting even one box of ammunition from me," he said.

Mr. Taylor also dismissed as "lies" Witness Keita's testimony that sometime in August

1999, he (Taylor) gave orders to the RUF to join the Armed Forces of Liberia (AFL) and Mr. Taylor's Anti Terrorist Unit (ATU) fighters to fight against LURD rebels in Lofa County, Liberia.

Mr. Taylor also denied allegations by both Witnesses Mansaray and Keita that the former Liberian president supplied weapons to RUF rebels, which they said were used to launch attacks against the government and people of Sierra Leone.

Witness Mansaray in his March 2008

testimony said that sometime in April 1999, Mr. Taylor supplied the RUF with weapons, including an anti aircraft twin barrel gun. The weapons, the witness said, were presented at a muster parade in Magburaka, northern Sierra Leone. Mr. Taylor today denied supplying the RUF with any such weapon.

"No I did not. To have had a weapon of that sort means we did not disarm. A twin barrel anti aircraft gun is not a little piece of equipment. It takes two operators to fire that weapon and it is manned by a squad of ten

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## *Issa Sesay*

*told RUF fighters that Mr. Taylor had given an order for them to attack Guinea. The witness said that Mr. Taylor provided arms and ammunition, including bombs, for the operation.*

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men. Its not a little toy. It's a blatant, blatant lie," Mr. Taylor said. Mr. Taylor had the same response for Witness Keita's evidence that Mr. Taylor had provided weapons for use by RUF rebels in Sierra Leone. Mr. Taylor further dismissed Witness Keita's allegations that together with RUF Commander Sam Bockarie and Mr. Taylor's Special Security Unit (SSU) commander Benjamin Yeaten, he (Keita) had

visited Mr. Taylor's White Flower residence in October 1998. Mr. Taylor today said that he has never even met Witness Keita in person. "I didn't know the gentleman, never met him," Mr. Taylor said.

"We are talking about October 1998. I was not living in White Flower at this time. I moved there on my birthday in January 1999," he added.

- AllAfrica.com

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The Spark  
Friday, 25 September 2009

## Taylor Denies Plan to Invade Salone 1991



Charles Taylor did not have any knowledge of plans by rebel forces to invade Sierra Leone in 1991, he told Special Court for Sierra Leone judges in The Hague yesterday. In rebuffing prosecution charges that he was a key planner in the major rebel attack on his neighboring country during its 11-year conflict, Mr. Taylor dismissed the allegations as "lies."

"I did not know of any prior

plans for the invasion of Sierra Leone in 1991," the accused former Liberian president said yesterday.

Mr. Taylor was responding to the evidence of a protected prosecution witness who testified in 2008 that Mr. Taylor was part of a common plan with Revolutionary United Front (RUF) rebels to invade Sierra Leone. For purposes of protecting the witness's identity, a huge portion of yesterday's hearings

was held in closed session.

In his 2008 testimony, the witness said that in February 1991, he saw Mr. Taylor and RUF leader Foday Sankoh in a convoy. When they got to the Liberian town of Voinjama, they

made plans for the RUF to invade Sierra Leone, the witness had testified. The witness further said that he personally sat with Mr. Taylor and discussed the invasion of Sierra Leone.

Dismissing the witness's ac-

count as a lie, Mr. Taylor told the court that by February 1991, he had not yet gone to Voinjama.

"It's a lie. I had not even gone from Kakata to Gbangha and

# Taylor Denies Plan to Invade Salone In 1991

*From front page*

so I would not have moved to Voinjama," Mr. Taylor said. "There is no way you can get to Voinjama except you go through Gbangha."

The witness testified to being present at Voinjama in 1991, where he said Mr. Taylor and Mr. Sankoh developed a strategy to attack Sierra Leone from Voinjama, Vahun and Zimmi. Mr. Taylor denied the witness's claim.

"Maybe he saw a ghost of someone sitting like Charles Taylor. Its all a lie," he said. "I was never present there. I never discussed any strategies or plans

with Sankoh because I was not there."

Mr. Taylor further denied the witness's allegations that he (Taylor) dominated the meeting where the plan to attack Sierra Leone in 1991 was discussed.

"How would I dominate a meeting that I never attended?" he asked. "How can I dominate a meeting when I'd never gone through military training?"

The witness' testimony reinforced prosecution allegations that Mr. Taylor was part of a common plan and purpose with the RUF to attack Sierra Leone in March 1991 and that throughout the duration of the 11-year conflict

in Sierra Leone, Mr. Taylor exercised some control or influence over the RUF. The prosecution further alleges that Mr. Taylor supplied arms and ammunition to RUF rebels and that all diamonds mined by the RUF were taken to Mr. Taylor in Liberia. Mr. Taylor has denied these allegations.

Mr. Taylor yesterday also told the court how he executed four of his National Patriotic Front of Liberia (NPFL) Generals for conniving against him and helping the RUF in attacking Sierra Leone. The four men who were executed were Sam Lato, Oliver Vanney, Anthony Menkunagbe and Sam Towah.

"They put together a group called Black Ghadafa, an anti-NPFL group planning later on to kill me and destroy the leadership of the NPFL," Mr. Taylor said. "They were arrested and it was at that investigation that it comes out that they were involved with Foday Sankoh. That is why they were killed."

Several prosecution witnesses who claimed they were forcefully recruited when the RUF invaded Sierra Leone in 1991 had mentioned the names of these executed Generals as part of the group(s) that recruited and trained them in Sierra Leone. These men, they said, were Liberians.

## "I Did Not Know Of Any Prior Plans for the Invasion of Sierra Leone in 1991"

### *Taylor Says*

By Alpha Sesay

Charles Taylor did not have any knowledge of plans by rebel forces to invade Sierra Leone in 1991, he told Special Court for Sierra Leone judges in The Hague today. In rebuffing prosecution charges that he was a key planner in the major rebel attack on his neighboring country during its 11-year conflict, Mr. Taylor dismissed the allegations as "lies."

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Mr. Taylor was responding to the evidence of a protected

prosecution witness who testified in 2008 that Mr. Taylor was part of a common plan with Revolutionary United Front (RUF) rebels to invade Sierra Leone. For purposes of protecting the witness's identity, a huge portion of today's hearings was held in closed session.

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the witness had testified. The witness further said that he personally sat with Mr. Taylor and discussed the invasion of Sierra Leone. Dismissing the witness's account as a lie, Mr. Taylor told the court that by February 1991, he had not yet gone to Voinjama.

"It's a lie, I had not even gone from Kakata to Gbangha and so I would not have moved to Voinjama," Mr. Taylor said. "There is no way you can get to Voinjama except you go through Gbangha." The witness testified to being present at Voinjama in 1991, where he said Mr. Taylor and Mr. Sankoh developed a strategy to attack Sierra Leone from Voinjama, Vahun and Zimmi. Mr. Taylor denied the witness's claim.

"Maybe he saw a ghost of someone looking like Charles Taylor, its all a lie," he said. "I was never present there. I never discussed any

strategies or plans with Sankoh because I was not there." Mr. Taylor further denied the witness's allegations that he (Taylor) dominated the meeting where the plan to attack Sierra Leone in 1991 was discussed. "How would I dominate a meeting that I never attended?" he asked. "How can I dominate a meeting when I'd never gone through military training?"

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told the court how he executed four of his National Patriotic Front of Liberia (NPFL) Generals for conniving against him and helping the RUF in attacking Sierra Leone. The four men who were executed were Sam Lato, Oliver Vanney, Anthony Menkunagbe and Sam Towah.

"They put together a group called Black Ghadafa, an anti-NPFL group planning later on to kill me and destroy the leadership of the NPFL," Mr. Taylor said. "They were arrested and it was at that investigation that it comes out that they were involved with Foday Sankoh. That is why they were killed. Several prosecution witnesses who claimed they were forcefully recruited when the RUF invaded Sierra Leone in 1991 had mentioned the names of these executed Generals as part of the group(s) that recruited and trained them in Sierra Leone. These men, they said, were Liberians.

### ambassador Signs Book ence of Juan Bosque

Communist Party, the National Assembly of People's Power and also President of the Cuban Association of War Veterans (Association of Combatants of the Cuban Revolution).

He joined Fidel Castro in his assault on Moncado Garrison in Santiago de Cuba on 26th July, 1953.

Bosque was one of the most beloved and respected historical leaders of the Cuban Revolution. The late Cuban leader has already been buried.

Mr. Abdul Karim Koroma, the Information Attaché at the Sierra Leone Embassy in Ethiopia also witnessed the ceremony.

# Bar Association Prexy Replies Sylvia Blyden

Joseph F. Kamara., ESQ.  
President  
Sierra Leone Bar Association ("SLBA")

Dr. Sylvia Olayinka Blyden  
Publisher of Awareness Times Newspaper  
17 Garrison Street  
Freetown, Sierra Leone

17th September 2009

Dear Dr. Blyden,  
Response to Letter of 11th September 2009

This is to acknowledge receipt of your letter dated 11 September 2009 instant. May I seize this opportunity to thank you and accept your best wishes, on behalf of the membership of the Sierra Leone Bar Association ("SLBA"), the executive, and on my own personal behalf.

There are three thorny, but yet, critical issues arising from your letter that needs attention and/or resolution. I shall itemize these issues and attempt to address them individually for ease of reading.

#### Issue No. 1

That a letter issued from the Office of the President, 'flagrantly shows utter disrespect for the independence of the Sierra Leone Judiciary from the Executive arm of Government'.

#### Issue No. 2

Sierra Leone's residents are "now living in a country whose presidency is assuming powers it does not legitimately possess; to the extent of even abrogating to itself the originating authority to announce when rulings are to be expected from the Supreme Court"

#### Issue No. 3

The "re-arresting and detention of some illegal poachers who had been tried, convicted and penalized by the Judiciary but were re-arrested upon the desires of the executive arm of Government and dragged again in front of the same judiciary".

In response to both the first and second issues, it must be noted that a cornerstone principle or one of the fundamental pillars of democracy, is that the three arms of government should be kept separate. To that extent, your comments receive our support and endorsement. The SLBA will not sit silently by whilst any one arm of government usurps the role and functions of another arm. The SLBA congratulates your vigilance on this matter.

The theory of Separation of Powers is vital but should not be interpreted as the complete insulation of the authorities who wield the powers. I take the view that separation of powers includes cooperation and dialogue between and amongst the arms of government for the overall good of the nation. The theory also implies the application of checks and balances. This means that the organs of government monitor the

behavior of each other, having the effect of keeping an even balance of power.

Upon careful reading of the impugned letter, and upon applying the plain and literal rule of interpretation, it is my considered opinion that the President has an overarching responsibility to the citizenry to allay their fears and provide answers to questions and situations that have been referred to him. It seems to me therefore, that the announcement of a suggested judgment delivery date ("when the Supreme Court resumes sittings by mid-September") is merely information and does not constitute a mandatory stipulation.

In law, there's a subtle distinction between mandatory and directory stipulations. Only mandatory manner and form requirements are binding. Non-compliance with a directory requirement is intended to have no legal effect on validity. (BDA Private limited v. Paul P. John & Others 2008 (37) PTC 41 (Del.))

Simply put, the Judiciary is not bound nor compelled by any stipulated date contained in the letter. It should be noted also, that the Judiciary is not subject or answerable to neither the executive nor the Legislature. (Sec 120 (3) Act. No. 6 of the Sierra Leone 1991 Constitution) Upon an objective analysis therefore, where the President shares with the people information he has on a question which has been specifically drawn to his attention, and which is clearly a concern for a given section of the citizenry; with all due respect, this cannot be characterized as interference nor to be interpreted as a compulsive order directed to the Judiciary.

Without gainsay, it cannot be denied that it would be best that the announcement of a judgment date should

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come from the Judiciary itself. However, be that as it may, if the President on the other hand, had arbitrarily and on his own volition, imposed a date for the judgment on the judiciary, then my response would have been entirely different.

The above situation notwithstanding, please be assured that the SLBA denounces any act which has a tendency to extended executive power outside its prescribed boundaries. Our interest (yours, and mine) and those of the entire nation coincide on the drive to help (keep) Sierra Leone from sliding back into strife. In no mean way, the separation of powers will assist in this endeavour.

On the third issue of the re-arresting and detention of some illegal poachers. I am unable to comment, as I am not privy to the entire background and therefore have no supporting evidence before me, to make a informed response. Albeit, I have set up a three man investigative team, headed by no less a person than the Vice President of the Bar Association, Mr. Reginald Fynn, to inquire into the allegations of abuse of process.

Please be assured that the SLBA under my leadership will partner with the press and civil society to ensure the protection of fundamental human rights of the individual and the rule of law as enshrined under the Sierra Leone Constitution. The SLBA will remain independent and free from undue political interference.

I thank you very much for raising these important issue and I look forward to continue collaboration between the press and the SLBA. This in itself is a veritable exercise of democracy.

*Yours faithfully*

*Joseph f. Kamara Esq*

*President*

*Sierra Leone Bar Association*



## CharlesTaylorTrial.org (The Hague)

Thursday, 24 September 2009

### **Liberia: Taylor Denies Giving Money to Rebel Leader or Safekeeping Diamonds**

Alpha Sesay

Charles Taylor did not give jailed Sierra Leonean rebel leader Foday Sankoh \$20,000 in 1999, either as a "good gesture" or as a payment in exchange for safekeeping diamonds for his rebel group, Mr. Taylor told Special Court for Sierra Leone judges today.

"No I did not send Sankoh any money. If I had, it would have been a good gesture," the accused former Liberian president said today in response to whether he ever gave Mr. Sankoh an amount of \$20,000.

Mr. Taylor was responding to the evidence of a protected prosecution witness who said, in his 2008 testimony, that while the government of Sierra Leone and the Revolutionary United Front (RUF) rebels were in the Togolese capital Lome for peace talks in 1999, Mr. Taylor gave a member of the RUF external delegation, Ibrahim Bah, an amount of \$20,000 for the RUF leader Mr. Sankoh. Mr. Taylor said today that this was not true.

"If I wanted to send money for Sankoh, I would have done so through the Liberian Foreign Minister who was in Lome. It would have been a good gesture just like Eyadema and Obasanjo did give him money, but I did not," Mr. Taylor said. [Mr. Taylor was referring to former Togolese president, Gnassingbe Eyadema, and former Nigerian President, Olusegun Obasanjo].

According to the witness, Mr. Sankoh was very agitated upon receiving what he called "a peanut" from Mr. Taylor because Mr. Sankoh had received reports that RUF commander Sam Bockarie had given huge amounts of diamonds to Mr. Taylor during Mr. Sankoh's incarceration. Between 1997 and 1999, Mr. Sankoh was in jail in Nigeria and in his absence, Mr. Bockarie acted as leader of the RUF. When rebels attacked Sierra Leone's capital in January 1999, Mr. Sankoh was released and the government of Sierra Leone decided to hold peace talks with the RUF. This led to the signing of the peace agreement between the two parties in the Togolese capital Lome in 1999.

Prosecution witnesses have alleged that during Mr. Sankoh's absence, Mr. Bockarie took orders from Mr. Taylor. Witnesses have also alleged that all diamonds mined by the RUF were given to Mr. Taylor for safe-keeping. Mr. Taylor has been charged by the Prosecution with aiding and abetting the RUF's crimes through the exchange of weapons and other support for diamonds, and also with being in a position of control over the RUF so as to be able to prevent or punish crimes committed by RUF forces.

According to the protected witness, whose testimony Mr. Taylor sought to discredit today, Mr. Sankoh was expecting to receive more money from Mr. Taylor because the former Liberian president was in possession of diamonds on behalf of the RUF. The witness said that Mr. Sankoh did not see it as a gesture for Mr. Taylor to give him the \$20,000. Mr. Taylor dismissed the witness' account.

"This is total foolishness because I did not receive any money or diamonds from Bockarie. If I had sent him that money and he had said that it was peanuts, then it would have been ungrateful of him. Bockarie did not say so in his report to Sankoh," Mr. Taylor said.

"Sankoh never asked me a question about diamonds kept for the RUF," he added.

The prosecution witness also said that while members of the RUF delegation to the peace talks in Togo were on transit in Liberia, Mr. Taylor gave each of them an amount of \$300. Mr. Taylor admitted today

that while he did give members of the RUF delegation some money, he cannot remember what the exact amount was.

"I did give them some money but I cannot remember the amount. I agree," he said.

Mr. Taylor's also today challenged the authenticity of a hand-written report from the Black Revolutionary Guard Unit of the RUF which was presented to Mr. Sankoh after his release in 1999. The report, which was presented last year as a prosecution exhibit, stated that the RUF received support in the form of weapons and military advice from Mr. Taylor while Mr. Sankoh was in custody.

"Why will this individual present a hand-written report when the commander is already there, that the commander cannot sign? This is the part of their handiwork here. This is fabrication, this is what is going on," Mr. Taylor responded.

A 16-page minute of an oral report submitted to Mr. Sankoh after his release in 1999 also indicated that Mr. Taylor received about 1832 pieces of diamonds from the RUF for safekeeping while Mr. Sankoh was in custody. The report, however, does not make any reference to Mr. Taylor giving war-like materials to the RUF. All reference to receipt of war-like materials in the report were about help received from the RUF's "main helper in Burkina Faso."

Mr. Taylor denied receiving any such diamonds from the RUF.

Mr. Taylor's testimony continues on Tuesday. There will be no court hearings on Monday as the court will observe an official holiday in The Hague.

United Nations  Nations Unies

United Nations Mission in Liberia (UNMIL)

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**UNMIL Public Information Office Media Summary 24 September 2009**

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

**International Clips on Liberia**

**Liberian jailed for 10 years for importing cocaine in stomach capsules**

timesofmalta.com

A 34-year-old Liberian man who had been found with 68 drug capsules in his stomach this morning admitted to conspiring to traffic drugs. Benedict Nyumah, who had been resident in England but held a Dutch passport, filed his guilty plea shortly before he was due to undergo a trial by jury. He was arrested at the airport on March 15, 2007 after Customs officers became suspicious of his movements. The court was told that Mr Nyumah had conspired with other persons to import the drugs and had to pass on these drugs to an individual in Malta for a considerable amount of money. The capsules find in his stomach contained 789 grams of cocaine with a street value of €55,260. The Liberian was jailed for 10 years and fined €35,000 which, if not be paid, will translates into a further 18 months in prison.

**International Clips on West Africa**  
**Sierra Leone**

**S Leone authorities contest Amnesty report on maternal deaths**

FREETOWN, Sept 24, 2009 (AFP) - Authorities in Sierra Leone on Thursday contested as outdated an Amnesty International report saying that one in eight women risks death during childbirth or pregnancy. The West African nation's top medical officer, Kizito Dawo, told journalists that Amnesty's figures were "erroneous and based on information available long years ago." "We have moved away from those statistics and they are no longer tenable," Dawo said, in the first official reaction to the Amnesty report published on Tuesday, which called the one-in-eight figure "one of the highest maternal death rates in the world." "A lot of the statistics have been taken out of context, so this has made the report unacceptable.

**Guinea**

**U.S. Calls on Malagasy, Guinea Leaders to Step Down**

Sep 24, 2009 (allAfrica.com/All Africa Global Media via COMTEX) -- The United States has called on the leaders of the "unconstitutional governments" of Madagascar and Guinea to step down and hold elections. The call was made at the current session of the United Nations Human Rights Council, which is sitting in Geneva. The U.S. rejoined the council this year when the administration of President Barack Obama reversed the policy of his predecessor, President George W. Bush, to boycott the council. Speaking on Tuesday, the U.S. Charge d'Affaires at the council, Douglas Griffiths, said the administration could not remain indifferent "when constitutional and democratic systems are undermined or overthrown outright." He also called on the governments of Madagascar and Guinea to ensure that civil liberties were protected during their transitions to democracy.

## Ivory Coast

### China deal to double Ivory Coast manganese output

ABIDJAN, Sept 24 (Reuters) - China National Geological and Mining Corporation (CGM) will invest more than \$20 million over the next two years to double Ivory Coast's manganese output to 300,000 tonnes per year, Ivorian officials said. Ivory Coast is a small-scale metals producer, but is attempting to develop its mining sector, which also contains gold, to diversify its cocoa-based economy. State-owned CGM will spend 10 billion CFA francs (\$22.48 million), and in common with many other mining investment deals, take production of the steelmaking additive from the Lauzoua mine, around 180 km from main city Abidjan. 'Production at the moment is around 150,000 tonnes per year. With the support of the Chinese, we will increase production capacity beyond 300,000 tonnes in 2011,' Jean Likane-Yagui, managing director of Ivory Coast's state mining firm Sodemi, said late on Wednesday.

### Local Media – Newspaper

#### **Forestry Management Contracts Ratified Amidst Protests**

(The Inquirer, New Vision, The News, Heritage, National Chronicle, The Analyst)

- Amidst protests from civil society, the National Legislature has ratified four controversial Forest Management Contracts.
- The Forestry Management Contracts involve Euro-Liberia Logging Company, International Consultant Capitol, Geblo Logging Incorporated and Atlantic Resources.
- The ratification was performed less than three days after the Forestry Management Contracts were submitted by President Ellen Johnson Sirleaf.
- Reports say the Senate and House of Representatives hastily ratified the Forestry Contracts shortly after a public hearing.

#### **President Sirleaf Outlines Employment Challenges Facing Continent at Meeting with US President**

(Heritage, The Monitor, The News, the Inquirer, The Informer, New Democrat)

- President Ellen Johnson-Sirleaf has outlined a number of measures to address the employment challenges and needs of Africa's young population in a Tuesday meeting with US President Barack Obama and 25 sub-Saharan leaders in New York.
- The President named the creation of an environment to promote the private sector, support self-empowerment and agriculture through improved technology.
- In response, US President Barack Obama who initiated the meeting said a peaceful and prosperous Africa is America's national interest.

#### **Government Takes Over Guthrie Rubber Plantation**

(The Inquirer, Analyst)

- The Government of Liberia has temporarily taken over the troubled Guthrie Rubber Plantation in Bomi and Grand Cape Mount Counties amidst reports of illicit tapping, and acts of gangsterism on the plantation.
- Justice Minister Christina Tarr announced the decision Wednesday following an assessment visit to the plantation.
- Minister Tarr said government would manage the farm for three months until the Sime Darby Company takes over next January.
- Reports say officers of the Emergency Response Unit (ERU) of the Liberia National Police have started patrolling the plantation.
- Meanwhile, Government has placed an immediate ban on the sale of rubber from the Guthrie Rubber Plantation.

#### **INTERPOL Activities to Be Revitalized**

(The News)

- A three-day training workshop organized by the National Central Bureau of Liberia has begun in Monrovia with the view to revitalizing the activities of INTERPOL in Liberia. The National Central Bureau is the contact point for INTERPOL.
- The workshop which began yesterday in Monrovia brought together various security and law enforcement agencies in the country.
- Speaking at the opening of the workshop, Police Inspector General, Marc Amblard said since becoming a member of the organization in the fifties, Liberia continues to play an active role in advancing international police cooperation in fighting against transnational crimes.

### **Education Minister Lashes Out at “Mercenary” Journalists**

(New Democrat, New Vision)

- Reacting to criticism over the country's poor school system, Education Minister, Dr. Joseph Korto lashed out at those he called “mercenary” journalists who he accused of receiving money from his opponents to malign him.
- Minister Korto and his Deputies recently returned to work after being suspended by President Ellen Johnson Sirleaf due to the poor condition of a public school in the Barnersville suburb.

### **Dismissal at BIVAC Sparks Protest**

(Daily Observer, The Monitor)

- Container owners in Monrovia have threatened to take the management of BIVAC International, a pre-shipment inspection contractor of Government to court.
- The business operators threatened the action Wednesday due to what they referred to as the level of inconveniences caused them during a protest action by some of its employees.
- Reports say the protest which led to the temporary halt of the company's operations at the Freeport of Monrovia followed the dismissal of two of its employees.

**Local Media – Star Radio** *(culled from website today at 09:00 am)*

### **President Sirleaf Meets Obama...Outlines Measures for Change in Africa**

*(Also reported on Radio Veritas, Sky F.M., Truth F.M. and ELBC)*

### **Government Takes Over Guthrie Rubber Plantation**

*(Also reported on Radio Veritas, Sky F.M., Truth F.M. and ELBC)*

### **Forestry Management Contracts Ratified Amidst Protests**

*(Also reported on Radio Veritas, Sky F.M., Truth F.M. and ELBC)*

## **Radio Veritas** *(News culled from website today at 09:00 am)*

### **UNMIL's Nepalese Police Killed**

- [SIC] A member of the United Nations Mission in Liberia, Nepalese Formed Police Unit has allegedly shot himself twice in the Paynesville suburb of Red Light while on patrol.
- He was rushed to the John F. Kennedy Medical Centre and was later pronounced dead.
- Sources say there is no official reason for the suicide. But investigations into the incident are continuing.
- Meanwhile, the UN Mission in Liberia said it is currently investigating the death of the UNMIL Formed Police Unit officer which occurred at the Red-light Market in the Paynesville suburb at about 12:20 this morning.

### **Handicap International-Liberia Wants Government to Ratify UN Convention on People Living With Disabilities**

- The international charity, Handicap International is calling on the Liberian Government to ratify the UN Convention on the Rights of People Living with Disabilities.
- Speaking at the start of a two-day workshop, an official Handicap International-Liberia, Mr. Aaron Marwolo said people with disabilities must be physically rehabilitated and given access to public institutions, health, education and other social services.

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# The Jurist

Thursday, 24 September 2009

## FORUM

Op-eds on legal news by law professors and JURIST special guests...

### The ICC and the Middle East: A Needed Relationship



JURIST Special Guest Columnist **Sam Sasan Shoamanesh**, a legal adviser with the International Criminal Court (ICC) in The Hague and co-founder and Associate Editor of *Global Brief*, Canada's first international affairs magazine, says that in order for the ICC to be fully effective in protecting human rights and bringing an end to impunity, Middle Eastern nations and all other states that have not yet ratified the Rome Statute must embrace the ICC.

To date, the Arab world and the nations of what is traditionally known as the 'Middle East' (ash-sharq-l-awsat in Arabic, Ha-Mizrah Ha-Tikhon in Hebrew, Khāvarmiyāneh in Persian and Orta Doğu in Turkish), have had, for the most part, reservations in joining the International Criminal Court (ICC). The Hague based Court is the first permanent international judicial institution with jurisdiction to try individuals suspected of genocide, war crimes, crimes against humanity, and crime of aggression; the latter, once its legal definition is finally adopted (Article 5.2 of the Rome Statute). Many from the region, including Middle Eastern leaders and government officials, simply look at international (legal, financial, political, and military) organizations with great suspicion. They perceive them as mere tools of major 'Western powers', used (according to the argument) to advance the latter's politics and national interests cloaked under the banner of, inter alia, protecting human rights. Bluntly put, these views and perceptions find their historical roots primarily in the experience of colonialism and foreign tampering in the Middle East, as well as in the politicized track record of the UN Security Council. The unfavorable Middle Eastern response towards the warrant of arrest issued by the ICC against the acting President of Sudan, Omar Hassan Ahmad Al-Bashir, is said to emanate from these same deeply entrenched perceptions.

Without diving into whether or not such general criticisms are valid, as it relates to the ICC these views are not only ill-founded but sadly are serving to hamper the advancement and protection of human rights for the peoples of the region. And tragically, this in a 'land' that has historically experienced countless conflicts and that continues to lay witness to the suffering of millions of its inhabitants whose fundamental human rights have and continue to be trampled upon. A clearer understanding of the legal machinery and independence of the Court will reveal that there is in fact a symbiotic relationship between the ICC and Middle Eastern states, and more generally all sovereigns earnestly concerned about the cause of human rights and ensuring egregious international crimes do not go unpunished. The opportunity for this mutually fruitful partnership is yet to be fully seized.

To date, the Hashemite Kingdom of Jordan is the only state in the region which has ratified the founding treaty of the Court (Rome Statute: EN, FR, Arabic), thus becoming the sole representative of the 'Middle East' at the ICC. This status quo must change. This commentary by design is aimed at responding to some of the anxieties and misperceptions which to date have prevented the region's nations from assuming their rightful places amongst the 110 and growing States Parties of the ICC.

#### 1.0. Misconceived reservations about ICC ratification, jurisdiction, and independence

Misconceived notions that the Court is political or easily manipulated by the 'Great Powers' representing a threat to state sovereignty are ill-informed and emanate mostly from misapprehensions of the Court's legal machinery. There are, in fact, layers upon layers of protection existing in the legal edifice of the Court serving to guarantee the ICC's independence and respect for state sovereignty.

## 1.1. The complementarity principle

To cite but a few examples, State Parties to the ICC, in the first instance will always exercise jurisdiction over their nationals even if they are accused of crimes falling within the mandate of the Court. The complementarity test under Article 17 of the Statute, in practice, means the ICC operates as a court of last resort, giving primacy of jurisdiction to national courts (see para. 10 of the Preamble and Article 1 of the Statute), exercising its jurisdiction only if the State Party is “unwilling or unable to genuinely” carry out investigations or prosecute violations of the specific crimes falling within the ambit of the Court’s jurisdiction (Article 17.1(a)-(b)). “Sufficient gravity” of the crimes must also exist to warrant the Court’s intervention (Article 17.1 (d)).

Further, the contention that the complementarity test will favor Western nations that have well established legal systems is not entirely accurate. The complementarity test is not gauged against a universal gold standard, but rather, guided by the criteria outlined in Article 17 of the Statute, it is applied on a case-by-case basis based on the specificities of the legal system in question. In effect, the Court fully respects the autonomy of national legal systems. Yet of course, the proceedings at the national level must be genuine, impartially and independently carried out “with an intent to bring the person concerned to justice,” and they must respect the “principles of due process recognized by international law” (Article 17.2). Otherwise, the state in question will be considered “unwilling” to carry out the investigation and where warranted, the prosecution. The “inability” to investigate or prosecute test outlined in Article 17.3 of the Statute concerns the “total or substantial collapse or unavailability” of the national judicial system, or relates to situations where the system is “unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.” The legal requirements of Article 17.3 are designed to respond to, for instance, failed state situations or other cases where internal political dynamics and reality on the ground do not make it possible for lawful prosecutions to be carried out. Other situations where the state may be considered unable to adequately investigate and prosecute is where the domestic legal environment is operating in the midst of an active conflict or post-conflict situation. The complementary assessment does not, therefore, aim to scrutinize the substantive nature of a given domestic legal system.

Additionally, the complementarity principle in practice would translate into a situation where nations that have ratified, in order to strengthen their primary jurisdiction, will be inclined to initiate legislation and projects aimed at fortifying the domestic legal landscape and incorporating international crimes under the Court’s jurisdiction into domestic law – clearly a positive ancillary consequence of ratification in the overall aim of promoting human rights.

Lastly, it is important to highlight an important point contained in the Policy Paper of the Office of the Prosecutor. Guided by the wording of the preamble (para. 4) and other pertinent provisions of the Statute (Article 5.1), ICC prosecutions are solely concerned with “those who bear the greatest responsibility” for the “most serious crimes of concern to the international community” within the Court’s jurisdiction. In effect, this means that the Office of the Prosecutor as a general rule will only be interested in the ‘big fish’ and will not be investigating every potential violation committed by actors positioned lower in the hierarchy. This policy is yet another ICC reality which minimizes the Court’s scrutiny into otherwise sovereign domain. The “sufficient gravity” principle encapsulated in Article 17.1(d) of the Statute, again, further confines the intervention of the ICC to only exceptional cases where a clear threshold of “gravity” of the acts constituting the crimes in question and the degree of participation in their commission have been reached to justify further action by the Court.

## 1.2. Preconditions and exercise of jurisdiction

The ICC exercises its jurisdiction over natural persons and attributes individual criminal responsibility to those who: either (i) as nationals of a State Party have committed offences within the jurisdiction of the Court, or (ii) committed such crimes in the territory of a State Party. Further, the Court exercises its jurisdiction *rationae temporis* and without retroactive application. Therefore, the Court can have jurisdiction only with respect to crimes committed after the entry into force of the Statute (1 July 2002). As it concerns nations that ratify after the entry into force of the Statute, the Court can exercise jurisdiction over crimes committed after the date of ratification by that state. An exception to this rule is provided for in Article 12.3 of the Statute where a state can make a declaration under the provision to bring itself under the jurisdiction of the Court with respect to a crime(s) previously committed (with 1 July 2002 being the cut off date).

The Court may exercise its jurisdiction when a situation is referred to the Prosecutor by a State Party or the Security Council, or finally, when the Prosecutor initiates an investigation *proprio motu* (on its own accord) (Article 13).

Where the ICC Prosecutor initiates an investigation on his own, in all such instances, it is up to the Pre-Trial Chamber of the Court consisting of a panel of international judges – a separate and independent judicial organ – to review the evidence and determine whether or not the Court has jurisdiction and whether a “reasonable basis” exists for the Prosecutor to proceed with investigations (Article 15.3-4). It is also the Pre-Trial Chamber which decides if a warrant of arrest is to be issued in response to an application filed by the Office of the Prosecutor (Article 58). Even where an investigation is undertaken by the Prosecutor, within a defined period, the State Party whose national is under investigation can inform the Prosecutor it is or will carry out its own investigations of the crimes in question. If done in good faith, the State Party can then undertake the prosecution at the national level. Further, the prohibition against double-jeopardy is entrenched in the ICC Statute, so that a person who has already been tried by a national court for crimes falling within the jurisdiction of the Court cannot be re-prosecuted by the ICC (Article 20). Again, the trial at the national level has to be fair and impartial and not merely a ploy to shield the person from criminal responsibility.

More importantly, even when the Security Council refers a situation to the Prosecutor acting under Chapter VII of the UN Charter (Article 13(b)) – as was the case with Sudan for instance – contrary to popular belief, the Prosecutor is not automatically bound to follow the referral. The Office of the Prosecutor will independently assess the information and evidence received from all sources and gauge whether there is a “reasonable basis to proceed” to initiate an investigation (Article 53). In the words of the Office of the Prosecutor: “[t]he triggering mechanism does not in any way change the way the Office selects situations, cases or individuals to be investigated. It does not make a difference whether the situation is referred by a State Party or the UNSC [United Nations Security Council]. The selection of situations, cases inside the situations, and persons to be investigated is always an independent prosecutorial decision based on the Statute and the evidence collected.”

These independence mechanisms are the sine qua non of the Court’s legitimacy and credibility. In sum, the Court operates independently *de jure* and *de facto*.

The above should therefore clarify for the Middle Eastern critic why at this juncture in the Court’s evolution the ICC could, for instance, pursue cases related to the 30 African states, or the other 80 nations that have ratified the Court’s Statute, but not in other situations. It also bears noting that in the past, the Office of the Prosecutor has scrupulously analyzed allegations of war crimes, genocide, and crimes against humanity allegedly committed in Iraq by the UK army (the UK is a State Party). The Office of the Prosecutor has even determined that based on “all the available information, [...] there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed, namely willful killing and inhuman treatment” (“War Crimes”: Article 8). Yet having conducted a thorough analysis, it concluded that the Article 17 gravity threshold was not met in the case. “4 to 12 victims of wilful killing and a limited number of victims of inhuman treatment” by the UK army were identified based on the materials before the Office of the Prosecutor. Further, it was determined that the complementarity test was satisfied in the case; meaning that “national proceedings [in the UK] has been initiated with respect to each of the relevant incidents” under study. Additionally, in April 2008, the Chief Prosecutor of the ICC confirmed his office was analyzing the situation in Afghanistan – a State Party –, and amassing information to gauge if and when to commence official investigations into alleged crimes committed on Afghan territory. Recently, he has echoed his previous statement stating that the office is gathering data on possible war crimes committed in Afghanistan relating to both NATO and Taliban forces. Again, outside of the African continent, the Office of the Prosecutor is also busy conducting preliminary inquiries in Georgia and the Gaza Strip. It is interesting to note that the fact-finding mission mandated by the UN Human Rights Council to investigate the Gaza War of 2008 has just concluded that there is evidence indicating that both the Israel Defense Forces and Palestinian armed groups committed actions amounting to war crimes and potentially crimes against humanity. The 574-page report of the mission, headed by Justice Richard Goldstone, recommends the Israeli and Palestinian authorities to undertake “credible” investigations and prosecutions into alleged violations and report their progress to the Security Council within six months. More interestingly for the purposes of this commentary, the report concluded that upon expiration of the deadline if the parties have failed to oblige, the Security Council should refer the situation to the ICC Prosecutor. Whether or not this transpires will be known in time, and will depend on the workings of the Security Council.

Therefore when objectively examined, the issue is not a question of a ‘bias’ in the *modus operandi* of the Court, but simply the reality of the Court’s jurisdiction limited primarily by the very fact that Middle Eastern states – except Jordan – amongst other nations have to date failed to ratify. This limiting reality can change for the benefit of all who genuinely value human rights as more nations ratify the Statute.



## 2. Benefits of ratification

The grim lessons of the region's modern history, further complicated by its geopolitical reality and strategic importance, combine to support the notion that ICC ratification can in fact prove beneficial by acting as a deterrence mechanism and by providing legal recourse in the event that nations from the region fall victim to aggression by neighboring states. Examples of disparaging regional interstate conflicts in recent memory include: Iraq's invasion of Iran and Kuwait in 1980 and 1990 respectively, Israel's offensive on Lebanon in 2006, and the wars waged against Israel in the 1948 Arab-Israeli War or the Yom Kippur War to name a few. Furthermore, the ICC could protect the region's states from external threats similar to the Persian Gulf War in 1990 or the 2003 American invasion of Iraq.

By becoming a State Party, Middle Eastern states would facilitate the jurisdiction of the Court over crimes covered by the Statute committed by a foreign military force or armed groups on their territory, even if the aggressor(s) are not nationals of a State Party. A real life example which highlights the importance of ratification is the 2008 South Ossetia War. Georgia was a State Party at the time the conflict broke out, during which the Russian military was engaged on Georgian territory. The fact that Georgia has ratified the Statute has meant that the Court has territorial jurisdiction and could potentially investigate alleged crimes committed on Georgian territory by all sides to the dispute. This includes the Russian army, notwithstanding the fact that Russia is not a State Party of the Court. The Georgia matter is currently under analysis by the Office of the Prosecutor.

Of course, ratification would also mean that should States Parties commit the crimes listed in the ICC Statute in their own territory or elsewhere against their own populations or the nationals of another state, whether a State Party or otherwise, their own actions would become subject to examination under the Court's jurisdiction – again a positive result if we are genuinely committed to protecting human rights and bringing an end to impunity. In each scenario, the complementarity test and other questions of admissibility must be positively answered before the Court will exercise its *de facto* jurisdiction. Nonetheless, one can see how ratification could (i) have a deterrence value for would-be aggressors, (ii) provide an avenue for judicial recourse for violations committed by internal and external actors, and (iii) help cultivate a culture of human rights and awareness of international criminal law in the region.

## 3. Rights of the defense at the ICC

Yet another anxiety contributing to reservations of joining the ICC is the question: what happens to the state's nationals once implicated in proceedings before the Court? What kind of legal representation and defense are they afforded? These are legitimate questions that any sovereign should pose before surrendering its nationals to another jurisdiction to be tried.

From a legal framework, the Court's legal texts are replete with safeguards concerning the rights of the defense. Fundamental guarantees are found in the Statute, which include, *inter alia*, the codification of the principles of *Ne bis in idem* (Article 20); prohibition against the creation of *ex post facto* laws (Article 22); grounds for excluding criminal responsibility (Article 31); and presumption of innocence (Article 66). The rights of the accused to a public, impartial and fair hearing, amongst other minimum guarantees are provided in Article 67 of the Statute. Article 67 rights of the defense are consistent with international instruments providing the same guarantees (e.g. Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). The exercise of such rights is effectively assured by the judicial control of the Court's Chambers. Moreover, Rule 20 of the Rules of Procedure and Evidence places a positive obligation on the Registrar of the Court to organize "the Registry in a manner that promotes the rights of the defense consistent with the principle of a fair trial."

Building on the lessons acquired from the experience of hybrid special courts and the UN *ad hoc* tribunals, with the aim of achieving 'equality of arms' between the prosecution and the defense, the ICC has in place the most robust systems. From ensuring that defendants freely choose their lead counsel from a pool of qualified independent lawyers, and benefit from capable legal teams reinforced by substantive legal assistance provided by the Office of Public for the Defense, to a structured favorable legal aid scheme and other support services, the defense pillar at the Court is alive and well, and continues to be bolstered. Admission to the Court's List of Counsel eligible to represent suspects and accused persons in ICC proceedings is open to all lawyers worldwide who meet certain quality assurance requirements (see Rule 22 of the Rules of Procedure and Evidence: EN, FR, Arabic; and

Regulation 67 of the Regulations of the Court: EN, FR, Arabic). Qualified lawyers from the Middle East and beyond ought to apply to the Court's List of Counsel to get involved in ICC proceedings first hand, contribute to the Court's legacy, and carry the knowledge acquired back to their home jurisdictions. Lawyers need not be citizens of a State Party to apply to the Court's List of Counsel.

Since its genesis, the ICC has aimed to be a model judicial institution capable of delivering quality justice. The ICC has in practice demonstrated that it is cognizant of the fact that a strong defense pillar at the Court and the conduct of fair trials before an independent judiciary that pay homage to the rights of the defense are pivotal in ensuring that the virtuous principles and goals defined in the preamble of its Statute can be achieved. Moreover, a viable defense and the conduct of fair trials are critical to achieving universal jurisdiction – an important aim of the Court. Lastly, trials that are conducted in conformity with the highest judicial standards and respect for due process rights of defendants also prevent the adverse result that would otherwise exist where warranted convictions are obtained, yet victims are re-victimized and their ordeals cheapened by critics of the system who would label the proceedings as partial or tainted with due process failures. The Court is very much in tune with these concerns. While there is always room for improvement, an objective assessment of the record to date illustrates that the Court makes every effort to avoid such an undesirable outcome, ensuring that individuals implicated in proceedings before it benefit from fair trials. The stay of proceedings by Trial Chamber I in the case of Prosecutor v. Thomas Lubanga Dyilo is a case in point. The judges of the Trial Chamber in that case ruled that the Prosecution's inability to disclose to the defense exculpatory materials in its possession obtained through confidential agreements with the United Nations pursuant to Article 54.3(e) of the Statute had worked to the detriment of the rights of the accused to a fair trial. On appeal, the Trial Chamber's decision to stay the proceedings was upheld by the Court's Appeals Chamber. A myriad of other examples are to be found in the growing ICC jurisprudence and in the policies and modus operandi of the Registry of the Court.

Consequently, any person ever brought before the Court will be afforded all the requisite facilities, legal assistance, and safeguards in an effort to ensure he/she undergoes a fair trial.

#### **4. Lack of judges trained in Islamic traditions**

A further expressed concern is that there are no judges at the ICC trained in Islamic law. The argument is as follows: given that ICC judges are not accustomed to the intricacies of Islamic law, they will judge Middle Eastern states – whose legal systems are for the most part influenced by the Shari'a – unfairly. Again this is a misconception. The hierarchy of applicable law at the Court is provided in Article 21 of the Statute, which stipulates that in the first instance, the legal texts of the Court should be applied, second, followed by international treaties and principles and jurisprudence established in international law where appropriate, and lastly, when the other two sources are exhausted, reference can be made to the general principles of law as found in national laws of legal systems of the world. Hence, a judge's religious training or personal background are immaterial to the extent that these have no real bearing on what law should be applied. This means that no matter the personal belief of a particular ICC judge, whether secular, Muslim, Jewish, or Christian, he or she is strictly bound to apply the sources of law defined in Article 21 of the Statute and in the sequence required. At best, a judge's theological training or background at the national level may have a bearing when a last-resort reference is made to national laws. Even then, national laws could be relied upon provided they are not inconsistent with the Statute, "international law and internationally recognized norms and standards."

For what it is worth, should any Middle Eastern state become a State Party, it will have the right to nominate its own candidates for election as ICC judges (Article 36). The Statute also requires that judges are selected in view of representation of all legal systems of the world as well as equitable geographical considerations (Article 36(8)). Hence, it is fair to conclude the possibility of having such nominees elected are rather probable. Moreover, membership with the Court will mean Middle Eastern prosecutors, judges, lawyers, and other relevant professional can apply and take up vacancies in all organs of the institution, seeing firsthand how the ICC operates while having the opportunity to contribute to the Court's development.

#### **5. The 'cultural relativism' hurdle**

International humanitarian law and international criminal law are designed to deter and minimize the suffering and occurrence of war, and to hold those responsible for the commission of the most serious crimes of concern to the international community accountable for their actions. The unsightly face of war is universal. The same is true for

the laws created to bring method to the madness of war. Hence, to the honest observer, the position that such laws have ‘Western’ orientations and therefore, should not be applied to Eastern Islamic societies does not withstand the slightest objective scrutiny. This holds particularly true in light of the fact that the Qur’an itself, apart from embracing the notion of “justice” as one of its core principles, contains countless provisions itemizing unacceptable conduct during hostilities. For instance, under Islamic Law in the ‘Siyar’ (Arabic for ‘behaviour’) war can only be waged in self-defence (Qur’an 2:190, 193). Further, Islamic scholars assert that concepts such as the ‘principle of distinction’, that belligerents must distinguish between civilians and combatants; the principle of ‘necessity and proportionality’; the proper treatment of prisoners of war (Qur’an: 9:5, 47:4) and the prohibition against their executions; and the prohibitions against enslavement, plunder, destruction of civilian objects, and the use of poisonous weapons are all Islamic doctrines enshrined in the Qu’ran and the Hadith, oral traditions based on the spoken words and conduct of Prophet Muhammad during his lifetime.

To claim, therefore, that certain provisions of the Statute may not be compatible with Islamic law (Shari’a) – applied strictly in only a handful of Middle Eastern states – and therefore, they cannot ratify the Statute is a patently untenable position to maintain. In particular when countless States Parties of the ICC have Islamic Constitutions; Islam as their official religion, or as the religion of the majority of their population (circa 50 percent or more). The table below lists these countries, with other relevant details.

\*NB: Additionally, two other States Parties to the ICC that have substantial Muslim populations are Bosnia and Herzegovina (40 per cent) as well as Tanzania (35 per cent).

In view of the above, should Middle Eastern nations adopt a rigid position vis-à-vis ratification, while the 110 member states of the Court and growing will embrace the 21st century and reap the protections afforded by the ICC, the region will find itself exposed and isolated from an increasingly interconnected international community. Finding themselves positioned in a historically quarrelsome region, it is in the interests of Middle Eastern nations to recognize that joining the ICC is in fact in their national interests. Should such states wish to import into ICC law elements of, inter alia, Islamic jurisprudence, -rationale and -approach which are in conformity with universally accepted legal norms, they can do so by engagement and involvement, not by alienation and isolation.

## **6. Head of state or government immunity**

Article 27 of the Rome Statute pierces the traditional head of state or government immunity by extending the reach of the Court’s jurisdiction to all those who commit egregious crimes irrespective of their title or status. Immunities afforded to heads of states will not bar the Court from the exercise of its jurisdiction. This rule is in keeping with earlier precedents in the discipline both codified and judicially rendered (see e.g. Genocide Convention (Article IV); Charter of the International Military Tribunal of Nuremberg (Article 7); Statutes of the International Military Tribunal for the Far East Charter (Article 6); International Criminal Tribunal for the former Yugoslavia (Article 7(2)); International Criminal Tribunal for Rwanda (Article 6(2)) and the Special Court for Sierra Leone (Article 6.2). See similarly Article 6 of the Statute of the Special Tribunal for Lebanon with respect to invalidity of amnesties; SCSL Appeals Chamber ruling of 31 May 2004 re Charles Taylor; ICTY Trial Chamber ruling of 8 November 2001 re Milosevic, and ICTY Trial Chamber ruling of 8 July 2009 re Karadzic cases to name a few). Prohibitive non-derogable norms of egregious international crimes like genocide, crimes against humanity and war crimes are arguably jus cogens crimes and cannot reasonably be considered as part of a state’s legitimate functions to justify immunity protection.

While heads of states or other senior officials of governments in the Middle East and elsewhere might feel anxious with respect to this provision, failing to ratify on this ground alone cannot possibly be in line with a genuine commitment to the cause of human rights both domestically and internationally. Surely we can all agree the principle of immunity in international law should not be used as a shield to protect the hostis humanis generis from due prosecutions.

To conclude, certainly it is a most notable position to advance that we want justice applied equally to all those who commit crimes which shock the human conscience. We must equally understand that if there is any international judicial institution which has the right history and founding, and the potential to be a truly international court of criminal justice, it is the ICC. It is not by rejectionism that we can better ensure the balance of international justice and rule of law remains impartial and free from political interference, but by involvement and support for the Court.

It is through ratification and through helping the Court achieve universal jurisdiction that the net of the ICC can be cast ever wider to catch all those who are criminally responsible whether at home or abroad.

The Middle East offered the world the first legal code crafted by Urukagina in 2300 B.C.; the Code of Hammurabi (1790 B.C.); the Cyrus Cylinder (539 B.C.), considered to be the first charter of human rights in recorded history, and the Treaty of Kadesh (1274 B.C.), the world's first international peace treaty. The region has been the birthplace of many of the major canons of human morality – Zoroastrianism, Judaism, Christianity, and Islam to name a few – carving human philosophical reflections over the ages into rudimentary yet fundamental questions of 'right' and 'wrong,' detailing codes of acceptable human conduct (i.e. Ten Commandments...). In the 21st century, the region can stay true to its prolific beginnings by embracing the International Criminal Court, truly a first in its class and for its time. By so doing, Middle Eastern states can dramatically change the status quo for the benefit of the region and the cultivation of a culture of respect for human rights globally. With active participation they can help make the international face of the Court shine ever brighter with diversity, all the while assisting it to better achieve the notable aims outlined in its founding treaty.

The world is a complex place dominated by realpolitik considerations. By shedding traditional self-defeating rejectionist postures and by espousing the ICC as State Parties, those in power in the Middle East can enhance the region's standing in the international legal order, and more importantly, they can demonstrate whether they are truly committed to the protection and promotion of the inviolable human rights of their citizens. Imagine an international criminal justice system under which "no ruler, no state, no junta and no army anywhere will be able to abuse human rights with impunity." It is by ratification that Middle Eastern states and all nations that are yet to embrace the ICC can bring us ever closer to this ideal existence. It is only then that we can finally proudly proclaim that we as citizens and nations of the world recognize the inviolability of human rights and will not allow violations and violators to go unpunished.

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