

SPECIAL COURT FOR SIERRA LEONE
PRESS AND PUBLIC AFFAIRS OFFICE

PRESS CLIPPINGS

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

Tuesday, 3 January 2006

The press clips are produced Monday to Friday.
If you are aware of omissions or have any comments or suggestions please contact
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No local newspapers will be published until Monday, 9 January due to the vendors taking their annual leave.

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newsroom

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UN Peacekeepers Quit Sierra Leone

The UN peacekeeping mission in Sierra Leone, which at one time was the biggest in the world with 17,500 troops, is pulling out six years after the mission was dispatched to the West African country to help end a brutal civil war.

The fighting ended in 2002 but the country is still beset by problems. The top UN official in Sierra Leone, Daudi Ngelautwa Mwakawago, of Tanzania, said peace had been restored thanks in part to the United Nations peacekeeping troops. But, in an interview with *The New York Times*, he warned that Sierra Leone, where the unemployment rate is 70 percent and many people live on less than \$1 a day, remained burdened by "a lot of debt, a lot of abject poverty".

It was this economic inertia, coupled with government corruption that was blamed for a Liberian-backed rebellion whose participants seized the country's eastern diamond fields and smuggled out precious stones to fuel their revolt. A result of this action was the implementation of the Kimberley Process - set up to ensure that diamonds are free of blood or conflict.

UN Secretary-General Kofi Annan today noted the success of the mission and pledged that the UN would remain active in the West African country, helping the Government and people to address the root causes of a brutal civil war and to rebuild national capacity.

"The mission was able to overcome a number of serious political and military challenges to become an effective peacekeeping operation that leaves Sierra Leone much better off today than it was five years ago," a spokesman for Mr. Annan said in a statement released in New York.

"Its many achievements include the successful disarmament, demobilization and reintegration of more than 75,000 ex-combatants; playing a central role in the preparation and conduct of the 2002 and 2004 elections; providing critical assistance and training to stand up the country's security sector; supporting the Truth and Reconciliation Commission; assisting the Government in reasserting its control over diamond-mining, and providing protection to the Special Court for Sierra Leone."

At present, half of the diamonds mined in Sierra Leone are now registered and taxed, meaning that the government is tens of millions of dollars better off. However, according to the *Reuters Foundation*, experts say total regulation is nearly impossible with rough gems lying in streams and rivers.

IOL Breaking News - (printer friendly version)**PRINT PAGE****SIZE**> [small](#) | [medium](#) | [large](#)**CLOSE
WINDOW****Peacekeeping troops to protect war crimes trial**

27/12/2005 - 21:00:07

Irish peacekeeping troops in Liberia today began drills to protect a war crimes court set up in Sierra Leone.

A 140-man armoured patrol, which also included Swedish Armed Forces, crossed the border into the capital, Freetown on the reconnaissance mission.

The troops will be providing security for UN personnel and justice officials at the Special Court of Sierra Leone.

The Court was set up in 2002 to prosecute warlords from the West African country's bloody civil war during the 1990s.

The patrol, which is also aided by reconnaissance, logistics and engineering specialists, is expected to remain in Sierra Leone for four days.

The deployment has already been approved by the Irish Government and the Dáil.

A Defence Forces spokesman said: "In the event of a security threat to the Special Court, the Irish and Swedish troops in Sierra Leone have been tasked with securing a helicopter-landing site in Freetown from which the evacuees could be transported to a safe location outside the country.

"The Quick Reaction Force is also planning for a possible deployment to Freetown by both air and sea."

The Special Court of Sierra Leone was set up by the Government of Sierra Leone and the UN in January 2002.

"The Court is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 1996," the spokesman added.

Cocorioko website

http://www.cocorioko.com/hot_news_31

Thursday December 29, 2005

In yet another surreal happenstance in the unfolding political drama in Sierra Leone, ahead of the 2007 General Elections, members of the opposition All People's Congress (APC) have paid a courtesy call on the incarcerated Commander of the Civil Defence Force (CDF), Chief Hinga Norman, in what many people described as a bold move to test the waters with a view to forming an alliance with the aggrieved Chief, who is presently at war with his own party, the ruling Sierra Leone People's Party (SLPP).

SAMFORAY COMMENTS

Tongues have been wagging in Freetown over the past few days with the visit first by the Secretary General of the All People's Congress, Victor Foh, followed by a meeting between Chief Sam Hinga Norman and the Leader of the APC, Ernest Bai Koroma. Details of the meeting with the two opposition leaders are being withheld until Wednesday, 4th January when a public statement from both sides is released.

After chiding the opposition leaders for sitting by idly in Parliament while the supreme law of the State was being violated by the governing party, Chief Norman commended Mr. Foh for sticking to his own convictions with regards to his membership in the APC as a member one of the most prominent families in the South.

Both Foh and Bai Koroma explained their position and that of the APC on the arrest and trial of Mr. Norman and the other CDF leaders. The APC leader vowed to take up the cause of the CDF with his fellow parliamentarians. Both parties are in consultations with their respective advisers and will make public their views on the arrest and trial of Chief Norman and other matters of interest to the public at home and abroad.

A. SamForay,
CDF Defence Fund.

**UNMIL Public Information Office Media Summary 1-2 Jan 2005**

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

International Clips on Liberia

VOA 02 January 2006

Ellen Johnson Sirleaf Named 2005 African Person of the Year

By Joe De Capua, Washington

Nigeria's Daily Independent newspaper has chosen Liberia's president-elect Ellen Johnson Sirleaf as its 2005 Person of the Year for Africa.

BBC Monitoring Africa Excerpt from report by Ghanaian GBC radio on 2 January 2006

Liberian MPs in Ghana to attend UN-sponsored training programme

Liberia's recently elected legislators arrived in Accra this morning for a four-day training programme facilitated by the United Nations. UN officials describe it as an in-depth long-term approach to leadership and governance in **Liberia**. The legislators include Jewel Taylor, wife of former President Charles Taylor, former warlord Prince Johnson who was captured in video overseeing the capture and torture of former President Samuel Doe who was later executed by Johnson's militia in 1990.

International Clips on West Africa

BBC Last Updated: Monday, 2 January 2006, 12:28 GMT

Ivorian military base 'attacked'

The army is back in control of a major military base near Ivory Coast's main city of Abidjan after a dawn attack.

A senior officer said the attackers were repelled from Camp Akouedo after it came under fire for about an hour.

Mutinous soldiers told the BBC they began the assault because of grievances over pay and their military status.

The New York Times January 2, 2006

Last U.N. Troops Pack to Leave Sierra Leone as Mandate Expires

FREETOWN, Sierra Leone, Jan. 1 (AP) - The last soldiers in what was once the United Nations' biggest peacekeeping force packed up over the weekend as their mandate expired Saturday, striking camp after six years of helping to end Sierra Leone's civil war. If the peace holds, it will be a watershed moment in efforts to restore calm to war-battered West

Africa. But the roots of conflict that have led to wars in many parts of the region, including corruption and poverty, remain firmly planted in Sierra Leone.

The top United Nations official in Sierra Leone, Daudi Ngelautwa Mwakawago, of Tanzania, said peace had been restored thanks in part to the United Nations peacekeeping troops. But in an interview, he warned that Sierra Leone, where the unemployment rate is 70 percent and many people live on less than \$1 a day, remained burdened by "a lot of debt, a lot of abject poverty."

02/01/2006 04:04:23

UN mission accomplished, leaving Sierra Leone 'at peace with itself'

FREETOWN, Dec 31 (AFP) - For United Nations peacekeepers in **Sierra Leone** it was mission accomplished Saturday after their mandate drew to a close with peace restored to a country torn asunder by a decade of civil war.

"The exit of the United Nations military mission in **Sierra Leone** clearly indicates that the country is now at peace with itself and its neighbours," the government and the mission known as UNAMSIL said in a joint statement broadcast on national radio.

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

December 30, 2005 Friday

SECRETARY-GENERAL PRAISES U.N. SIERRA LEONE PEACEKEEPING MISSION AS MANDATE CONCLUDES; SAYS U.N. WILL REMAIN ACTIVE, HELPING COUNTRY'S DEVELOPMENT

US Fed News

NEW YORK

The United Nations Office of the Secretary General issued the text of the following statement:

The United Nations Mission in Sierra Leone (UNAMSIL) will successfully complete its mandate on 31 December 2005.

The mission was able to overcome a number of serious political and military challenges to become an effective peacekeeping operation that leaves Sierra Leone much better off today than it was five years ago. Its many achievements include the successful disarmament, demobilization and reintegration of more than 75,000 ex-combatants; playing a central role in the preparation and conduct of the 2002 and 2004 elections; providing critical assistance and training to stand up the country's security sector; supporting the Truth and Reconciliation Commission; assisting the Government in reasserting its control over diamond-mining, and providing protection to the Special Court for Sierra Leone.

The people of Sierra Leone, assisted by the international community, have put the country on the path of economic recovery. But much remains to be done. The United Nations will remain active in the country, helping the Government and people of Sierra Leone in addressing the root causes of the conflict and capacity-building. The Secretary-General calls upon all Sierra Leoneans to take advantage of this unique opportunity to build on the success they have made with UNAMSIL's help, as the future of the country belongs to them.

December 30, 2005 Friday

As UN Peacekeepers Leave Sierra Leone, Annan Pledges Help to Consolidate Stability

UN News Service

With the peacekeeping United Nations Mission in Sierra Leone (UNAMSIL) ending its mandate tomorrow, UN Secretary-General Kofi Annan today noted its successes and pledged that the UN would remain active in the West African country, helping the Government and people to address the root causes of a brutal civil war and to rebuild national capacity.

"The mission was able to overcome a number of serious political and military challenges to become an effective peacekeeping operation that leaves Sierra Leone much better off today than it was five years ago," a spokesman for Mr. Annan said in a statement released in New York.

"Its many achievements include the successful disarmament, demobilization and reintegration of more than 75,000 ex-combatants; playing a central role in the preparation and conduct of the 2002 and 2004 elections; providing critical assistance and training to stand up the country's security sector; supporting the Truth and Reconciliation Commission; assisting the Government in reasserting its control over diamond-mining, and providing protection to the Special Court for Sierra Leone."

While hailing the people of Sierra Leone for putting their country on the path to economic recovery, the statement cautioned that much remains to be done and called on all Sierra Leoneans to build on the success they have achieved with UNAMSIL's help.

The Security Council created UNAMSIL in 1999 and imposed an arms embargo against certain prominent civilians as well as a travel ban against both the rebel fighters and the military junta. The mission is considered one of the UN's most visible successes, having deployed in the wake of a devastating civil conflict that left at least 75,000 people dead and many more maimed.

UNAMSIL's departure will be followed, starting on Sunday, by the activation of the UN Integrated Office in Sierra Leone (UNIOSIL), which is mandated to support the Government's efforts to ensure peace and security, consolidate State authority, promote good governance and human rights, address cross-border issues, and advance national recovery as well as economic and social development.

From Awareness Times Newspaper in Freetown

FEATURES

SIERRA LEONE: A Tale of Horror and Resurgence (Sort of): Review of Lans Gberie's Book

By Foday Bockarie Fofanah
Jan 1, 2006, 21:43

Sierra Leone's decade long war, which started inauspiciously in 1991 and ended in 2002 after over 50,000 killed and the country almost destroyed, has attracted a fair amount analysis, some of them serious, many not. Lansana Gberie's 'A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone' (Hurst 2005), is by far the most detailed and insightful yet about the conflict, and in one sense at least path-breaking: It covers the entire war years, and it can claim to be have been written by someone who was, in many ways, truly an insider.

The book offers us illuminating insights into the bloody rebel war from its genesis to the final conclusion, providing a very lucid and engaging account of Sierra Leone's implosion into violence and state collapse. The author was a journalist in Sierra Leone during the first five years of the conflict, and made frequent visits there, sometimes for extended periods, during its last years. (I should state here, by way of full disclosure, that Gberie is a friend and a highly-regarded former colleague.) But the book is not just a recounting of personal experiences or simple reporting. Gberie, who went on to write a post-graduate thesis on the war, brings to an understanding of the conflict a sharp analytical mind, an eye for the telling detail, and a mature understanding of conflict theories, military history, and Sierra Leone's depressing politics to explain this greatly misunderstood war.

The strength of this book, however, lies overwhelmingly in the author's personal experience. As a journalist covering the war in the early 1990s, Gberie, who was known for his tenacity and intellectual curiosity even then, had the rare opportunity (no other local journalist had that opportunity at the time) of meeting the key players in the conflict, including the enigmatic rebel leader Foday Sankoh, who was to many of us then only a frantic voice sometimes heard on the BBC. This enabled him to gain access to first-hand information on the inner workings of not only the various governments that came to power during the conflict but also the enigmatic and elusive Revolutionary United Front (RUF) group, which was spearheading the brutal, destructive war.

At the time the civil war broke out in 1991, very little was known about the RUF and its leadership. In those heady days, it became next to impossible for most journalists to get news stories from behind rebel lines. All there was by way of credible information from the warfront came from fleeing civilians, terrified soldiers and government officials. More often than not, the information we got from these questionable sources were either exaggerated or heavily distorted or padded with propaganda. It took more than professionalism to get a glimpse of happenings behind rebel lines. By the time the war came to a close, no fewer than ten local and foreign journalists had lost their lives in the line of duty. But Gberie's courage and penchant for the good story served him well as he covered the war. It is Gberie's wealth of experience as a journalist of many years standing and close proximity to the principal actors in the conflict on which the book is built. From the makings of the RUF through the evil machinations of Liberian warlord, Charles Taylor, Gberie takes us on a fascinating ride through Sierra Leone's chequered political and military history to a despicable war symbolised by an orgy of butchery and banditry.

Using narrative and analysis, Gberie argues forcefully that Foday Sankoh was a rebel without a cause who became a pawn in Charles Taylor's grand design to destabilize Sierra Leone and other neighbouring countries, including Guinea. He is able to illustrate that Taylor instigated the war with the sole intent of "revenge and pillage". To further his reasoning, he premised his argument on the

unholy alliance between Charles Taylor and Foday Sankoh as well as other dissidents who had forged a cosy relationship with him with a view to stirring 'rebellions' in their respective countries. What emerges from his argument is that the external backers helped bankroll the RUF war. Hence, despite the fact that Taylor strenuously denied any involvement in the rebellion, argues Gberie, evidence is overwhelming to suggest that Taylor was the brains behind it and it was he who was calling the shots from Liberia. Gberie is convinced that Sankoh, though ruthless and manipulative, was little more than a stooge who executed Taylor's grand plan, whether he was aware of it nor not.

Sierra Leone's war has been greatly misrepresented, even by some very well-meaning writers and analysts. A scholar like Paul Richards, who knows Sierra Leone very well and is in fact fond of the country, has tried to explain the war, rather risibly, as "a rural rebellion" or an "agrarian conflict". Gberie is able to demonstrate that the war had little to do with political grievance and hardly anything at all to do with agricultural land disputes. He portrays the RUF as a mercenary outfit that was driven not by political motive or ideology but by unbridled and unabashed banditry. Gberie tries to demonstrate that though diamonds did not cause the war, they helped to fuel it. He helps to shed more light on some of the causative factors of the war. He believes that bad governance, corruption and mismanagement acted as a catalyst but not the dominant factor.

While it is reasonable to conclude that the book covered much ground, it must be stated that even a book of this broad scope is not without short-comings. Perhaps the most significant short-coming of this book is that it gives short shrift to the allegations of brutalities by other players in the war, particularly the Kamajors and the West African peacekeeping force ECOMOG. Gberie focuses largely on the RUF and the Sierra Leone army, since the "primary responsibility for the war, and therefore the atrocities that characterised it, lies with" the group that started the conflict (RUF). This is a reasonable statement of fact, but if Gberie had done as thorough an examination of the Kamajors and ECOMOG as he does the of RUF and the rogue Sierra Leone Army, he would perhaps have shown, with his singular insight, why groups that started with such high intentions became embroiled in some of the excesses that characterised the war. Gberie hints at this problem when he quotes Martin van Creveld as writing "War being the most imitative of human activities, the very process of combating low-intensity conflicts will cause both sides to look alike unless it can be brought to a quick end." But he does this simply to dismiss any "attempt at moral equivalence" – that is the tendency by some people, particularly the so-called Special Court for Sierra Leone (which Gberie treats with understandable scepticism, even disdain) to view the Kamajors and the rebels on the same depraved level. It would have helped, however, to shed more light on the activities of all those who were in command and control of both the Kamajors and ECOMOG, if only to enhance our understanding of the complications that marked the latter stages of the war.

This is, however, a short-coming which one can pass over without even noticing, such is the engrossing nature of Gberie's narrative. 'A Dirty War in West Africa' is a well written and compelling work, bringing to life most of the characters, otherwise inaccessible, that were behind Sierra Leone's carnage. Here's just a sampling. When Gberie first met Foday Sankoh in 1996, in a hotel suite in Ivory Coast, the rebel leader, already notorious for incredible atrocities, was "surrounded by a group of beautiful women who I was told were his bodyguards. It was something he had copied from [Gaddafi], whose personal security details are dominated by women who are said to be virgins. I was slightly taken by Sankoh's built. He was shorter than I had imagined, rotund and bearded, the face chubby and jovial." Sankoh struck Gberie as someone with "an adolescent sense of entitlement", with a "blind rage" which was "as much a defining feature of the RUF's campaigns as the mutilation of civilians." Quite often a mordant wit and irony deliciously creeps in. Here's how Gberie describes "a sordid moment of frenzy" in the life of the National Provisional Ruling Council (NPRC) junta: in December 1992, the junta "summarily executed twenty-nine people, including a pregnant woman, a palm wine tapper, several newly-recruited police constables, and several soldiers...who were then in detention at Pademba Road prison for allegedly plotting a

coup.” In reaction to international outrage over the executions, the junta’s spokesman Karefa-Kargbo told the BBC that they had solid evidence of the coup plot, the strongest of which was “a written contract” between the coup plotters and “an illiterate herbalist.” Indeed. Even the otherwise insipid Pallo Bangura, the former RUF presidential candidate, is of interest. When Gberie met him in September 2002 – after the spectacular defeat of the RUF in nation-wide polls – Bangura’s wife, who had links with the ruling Sierra Leone Peoples Party (SLPP), had abandoned him, and “he was clearly a broken man.” In conversations with Gberie, Bangura “affected the tone of a disinterested analyst, speaking unctuously about the ‘climate of vilification and hate’ which he felt was ‘negative to the peace process’” Bangura, we learn, later volunteered to teach for free in a Freetown secondary school as “a sacrifice”.

Interesting vignettes such as these give this book a power and an appeal which none so far written about Sierra Leone can hope to match.

Foday Bockarie Fofanah was editor of Sierra Leone’s Concord Times newspaper. He Holds an MA in journalism from Cardiff University.

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Cocorioko website

http://www.cocorioko.com/news_leader

Saturday January 24, 2005

By John Lansana Musa, ESQ.

INTRODUCTION: THE PITFALLS OF BAD STATECRAFT

There are many weighty reasons for undertaking the present essay, the least of which is not policy division of opinion on Sierra Leonean statecraft. The noun, statecraft has been defined as the wisdom in the management of public affairs - statesmanship, and diplomacy. After so much bungling of statecraft with consequences still unknown to the authors of bad government, this subject speaks its own importance in the postwar administration of the Republic of Sierra Leone. The importance attached to good statecraft often escapes our notice as we continue to assess our politicians and leaders on how they conduct the public business of our republic by embracing what Alexander Hamilton calls "An enlightened zeal for the energy and efficiency of government," in the Federalist Papers. That the "vigor of government is essential to the security of liberty." More specifically to our subject, Hamilton says in Federalist No. 70:

"Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy."

It is this lack of vigor of government which has led us to inefficiency of administering the various sectors of government, a generation and more years after flag-independence. And when government is questioned on the ill-administration of statecraft, some compatriots dole out excuses. But these compatriots overlook the central point that Hamilton was making about those who frame poor statecraft:

"A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government."

Thus, when we debate national issues, proponents dovetail into critics of Government and opponents appear in the armor of defenders of Government with nary a plausible argument to behold. In this fashion, the debate is not fruitful and often ends in misrepresentation of the elementary reasons for conducting national debates on vexing prevailing issues. Henry Kissinger has suggested what we should do in the canvassing of national questions. In his speech at the Third Pacem in Terris Conference, October 29, 1973, Dr. Kissinger says,

"The prerequisite for fruitful national debate is that the policymakers and critics appreciate each other's purposes. The policymaker must understand that the critic is obliged to stress imperfections and goad actions. The policymaker must be concerned with the best that can be achieved, not the best that can be imagined."

Thus, in disregard of this useful manner of framing statecraft, proponents of statecraft for the last nine years have been more concerned with the best that can be imagined, rather than the best that can be achieved. Disregarding all the pitfalls of policymaking, we have come to see pratfalls that require only the international community to pick us up. From the prosecution of the RUF war, the suing for peace in the face of the onslaught of the rebels, the negotiations with the rebels and the establishment of the Special Court for Sierra Leone, we invariably regard mediocre bureaucratic routine performance as conception of good statecraft, notwithstanding the patent incompetence that abounds in these grave undertakings of government. This judgment is glaring when one reads with attention all the organic instruments wrought in the war and peace processes.

Statecraft, should not be undertaken in moments of dire circumstances by national officials, it must be learned and practised with extreme care and dexterity. Where it has not been previously practised by our nation, competent services should be procured from national resources of Sierra Leoneans with experience to assist Government to achieve her index of intentions. The yielding of the terms of peace to the rebels at every turn during negotiations with a gift of indemnity and impunity maximized the hand of the rebels. The worst case performance of Government at the negotiating table happened at Lome. There, the rebels, obtained the benefit of the bargain to walk free after committing bloody treachery. They were granted the highest seats in the Cabinet and were accorded immunity from prosecution. None of these terms of peace were safeguarded by CLAWBACK clauses as is the practice in the use of such terms of art in peace instruments.

This lack of reflection was employed in establishing the Special Court. It appears no experienced intellectual weight was thrown into the scale against the routine bureaucratic way of doing things. The President, on the caprice of his office and on the whim of his leadership skills not to consult, requested the Secretary of the United Nations to establish the present Special Court. Statecraft of the magnitude of establishing an ad hoc tribunal in the former Yugoslavia and Rwanda required the competence of International Experts to assist the U.N. before it resolved to do so. The Sierra Leone tribunal was framed by President Kabbah and his legal advisor, Attorney General Solomon Berewa, with the requisite intent of prosecuting violations of the laws of war by the RUF and the AFRC. In doing so, they harbored or ignored the ephemeral notion that such a court when internationalized by a UN resolution would not countenance across-the-board violations of the laws of war was a leap in the dark. Yet those who are in the servile pliancy of politicians who bungled this statecraft say, this was a good work, perhaps because it was "the best that could be imagined," instead of "the best that could be achieved"..

That Government did not know blanket amnesties granted every party in the Lome Accord were useless terms of peace in an international tribunal was poor reflection and

the bane of bad statecraft. That Government did not know allegations of violations of international humanitarian laws, the Geneva Conventions among other such laws would lead to the prosecutions of all suspects of such violations whether they were earnest patriots, heroes or rebel belligerents was a conception of Government operating in welter of ignorance of international standards of prosecuting such crimes.

More than these sentiments, the indictment of all belligerents at the two ad hoc tribunals for the former Yugoslavia and Rwanda did not even inspire the Sierra Leone Government to reflect on what it was doing in inviting the UN to establish a court to go after only the rebels and their confederates. This incompetence now dogs the nation as those indicted have filed motion after motion to question the establishment of the court, the germane issue of the sovereignty and its kindred notion of subordination of the courts of Sierra Leone to the Special Court and the violations of the Lome Accord that granted all parties to the conflict blanket amnesties.

It is a safe wager of opinion that had President Kabbah sought to prosecute violations of the laws of war in Sierra Leone courts under domestic law of treason, he would have unlikely prosecuted Mr. Norman or would have chosen to do so at the peril of civil unrest. One thing to keep in mind is that President Kabbah has admitted his gratitude to the Civil Defence Forces with presentation of Commendation Medals for their valour at war against the implacable rebels. In his TRC testimony, he admitted with profound gratitude more such appreciation about how the CDF held sway on the battlefield.

It also stated with immense appreciation how the CDF became the avant-garde and the force to reckon with as afar as repulsing the rebels was concerned. On the heels of the indictment of Mr. Norman, the lead peace negotiator at Lome and the chief architect of the Special Court, Vice President Solomon Berewa has wrapped himself in fig leaves to express consternation that he did not know this the reach of the court

In light of these anomalies in the practice of statecraft by Government, the question whether Samuel Hinga Norman should have been charged with violations of the laws of war and not the President, the former vice President Albert Joe Demby, his immediate and constitutional superiors, have characterized recent debate with less than discerning clarity. Norman was charged but will others likely be indicted based on the court's accumulating record and the forthcoming testimony of more witnesses including that of the President? An examination of this looming question is the burden of the following essay.

It has been announced that Samuel Hinga Norman will call President Kabbah and other civilian leaders as fact witnesses at his trial in the Special Court. President Kabbah has implied in his TRC testimony that he was not a commander of the CDF in the manner Mr. Norman was their coordinator. From Mr. Kabbah's testimony an inference looms that he was not the CDF commander to account for their alleged violations of the laws of war. Under these circumstances, what testimony would his counsel elicit from President Kabbah? Would they seek to connect the President to the chain of command through the introduction of memoranda and other probative evidence, thereby tying Mr. Kabbah to

the CDF in a manner that makes him a commander within the meaning of the Geneva Conventions and their respective Protocols? Would the Norman counsel link President Kabbah to the CDF by citing precedent at the International Criminal Court for the former Yugoslavia where President Milosevic and President Karadzic have been tied to the violations of war by the paramilitary groups?

Let us enter upon the subject at hand - statecraft and conjoin it to command responsibility. We have already argued here the notion that the doctrine of Command Responsibility applies to military commanders to take responsibility for the war crimes of their subordinates. We have equally stated that this doctrine has been extended to civilian leaders after World War II, and has recently been used in the prosecutions of civilian leaders at the two international criminal tribunals for the former Yugoslavia and Rwanda. In asserting these views, we are not to be misunderstood to be prejudicing the Prosecutor's quest to take his case "wherever the evidence leads" him. Nor are we to be understood to be expressing a preference for who should be indicted for the grave breaches of the laws of war in the Republic of Sierra Leone. This essay attempts to throw light at the pitfalls of bad statecraft and the concomitant consequences it portends for the probable indictment of civilian leaders.

COMMAND RESPONSIBILITY FOR CIVILIAN LEADERS

The question whether command responsibility extends to the President of Sierra Leone and others hitherto in the chain of command responsibility has been mooted in a vacuum without evidence. It can merely be countenanced on the public record before us. Our learned legal compatriot, Mohamed Savage has cast doubt on the extension of command responsibility to civilian leaders and we rejoined him to look yonder in history for jurisprudential examples for prosecutions of political leaders. But the learned gentleman still inveighs the notion of prosecuting civilian leaders when he stoutly writes,

"President Kabbah was 'no hands-on- commander' and did not give orders for the extermination of anyone, nor did his field commander Mr. Hinga Norman reported to him that the men directly under his command were violating the rules of war by perpetrating wanton violence on non-combatants. I still refer you to read that piece on Milosevic and see the difference between Milosevic as a non-military commander and Kabbah as a non-military commander. Kabbah did no such things as is alleged of Mr. Milosevic."

But case law confutes Mr. Savage's assumption in the Celebici case at the Hague. On the very question which confounds Counselor Savage, the Trial Chamber in Celebici held,

"that persons effectively in command of such more informal structures, with power to prevent and punish crimes of persons who are in fact under their control, may under certain circumstances be held responsible for their failure to do so. Thus the Trial Chamber accepts the Prosecution's proposition that individuals in position of authority, whether civilian or within military structures, may incur criminal responsibility under the doctrine of command responsibility on the basis of their de facto as well as de jure position as superiors."

In his fashion to restrict command responsibility to military commanders, and assuming that political leaders occupying positions of authority are not covered by Command Responsibility, Counselor Savage had this to say without legal foundation upon his rejoinder to Rev. Alfred SamForay who hitherto drew Mr. Savage's attention to nexus between President Kabbah and the CDF:

"You also listed the various roles of President Kabbah at the time and seem to suggest that, because of those roles, the President must have neglected command responsibility and should be therefore be prosecuted. If we are to go by this reasoning, then most Head of State, would have been prosecuted for most the wars their countries had been involved in, as most of them are Commander-in-Chiefs, sits in the War Council and had raised money to finance their country's war efforts to defend their country's sovereignty and protect lives and properties for which I believe every leader owes supreme responsibility to his country."

INDICTMENT OF POLITICAL LEADERS: What our learned gentleman forgets is that Command Responsibility lies in those positions of authority which Counselor Savage is discounting. The notion is compounded when exercise of duty in those positions are performed negligently. More than this, Mr. Savage seems to ignore the elements the crimes stated in indictment of Milosevic, Dr. Karadzic and Tadic, the civilian heads of state indicted at the Hague as essentially kindred to the actions undertaken by President Kabbah.

To wit, under Superior Responsibility, an ancillary doctrine of Command Responsibility, Milosevic's Indictment says this,

"Slobodan MILOSEVIC was elected President of the FRY on 15 July 1997 and assumed office on 23 July 1997. At all times relevant to this indictment, he held the post of President of the FRY.

"As President of the FRY, Slobodan MILOSEVIC was President of the Supreme Defence Council of the FRY. The Supreme Defence Council consisted of the President of the FRY and the Presidents of the member republics, Serbia and Montenegro. The Supreme Defence Council decided on the National Defence Plan and issued decisions concerning the VJ. As President of the FRY, Slobodan MILOSEVIC had the power to "order implementation of the National Defence Plan" and commanded the VJ in war and peace in compliance with decisions made by the Supreme Defence Council. Slobodan MILOSEVIC, as Supreme Commander of the VJ, performed these duties through "commands, orders and decisions."

"Under the FRY Law on Defence, as Supreme Commander of the VJ, Slobodan MILOSEVIC also exercised command authority over republican and federal police units subordinated to the VJ during a state of imminent threat of war or a state of war. A declaration of imminent threat of war was proclaimed on 23 March 1999, and a state of war on 24 March 1999."

To return to the point whence I started, what if the Prosecutor of the Special Court collected all the titles of President Kabbah under the Constitution of Sierra Leone and paraphrased Prosecutor Richard J. Goldstone at the Hague thus,

"Ahmad Tejan Kabbah, elected March 15, 1996, assumed office at State House and became Commander in Chief of the Armed Forces of the Republic of Sierra Leone, Chairman of the Defence Council, Chairman of the War Council.."

"Under the aegis of the same President Kabbah, the substantive Minister of Defence, finance, armed and organized logistics for the CDF through the agencies of the Ministries of Finance and Defence.."

It is clear that any indictment of President Kabbah would mirror and be consistent with that of Milosevic's. To take another example of how a leader such as President Kabbah can be brought into the dragnet of the Prosecutor, regard the following indictment of President Radovan Karadzic:

"Radovan KARADZIC was President of the SDS and in that capacity was also, inter alia, President of the Main Board of the SDS. Effectively the Main Board was the main authority within the party's hierarchy; it formulated the party's policies and ensured they were put into effect. The Main Board, of which Momcilo KRAJISNIK was also a member from 12 July 1991, and SDS leaders exercised direct control over the activities and policies of all levels of the SDS, including the municipal boards. The Main Board ordered the creation of the SDS Crisis Staffs in municipalities where Bosnian Serbs lived. The chairmen of the SDS municipal boards were frequently the Presidents of or members of the Crisis Staffs. Crisis Staffs included military and police officials amongst their members. Crisis Staffs exercised complete executive, legislative and regulatory authority in the areas under their control and controlled the Bosnian Serb forces.

"From 28 February 1992 until 12 May 1992, Radovan KARADZIC acting in concert with Momcilo KRAJISNIK, Biljana PLAVSIC and others, were jointly responsible for the deployment of the Bosnian Serb Territorial Defence in peace and in war, and for the utilisation of the police in war and other emergency situations. This became particularly evident when the Bosnian Serb Assembly created the National Security Council of the Serbian republic on 27 March 1992.

Radovan KARADZIC became President of the Council and Momcilo KRAJISNIK one of its members. The stated function of the National Security Council was to consider political, legal, constitutional and other issues of interest for the security of the Serbian People in Bosnia and Herzegovina. Radovan KARADZIC was of the view that decisions of the National Security Council should bind all the executive organs, the police and the government, particularly in urgent situations where decisions had to be taken on war, peace and other matters of national security. Until the Presidency was formed on 12 May 1992, the National Security Council was effectively the main body of authority in the Serbian republic."

Now Counselor Savage, consider the hypothetical circumstances whether Prosecutor Goldstone would have indicted President Kabbah when he testified at the TRC by admitting in pertinent part at the following number paragraphs of his testimony there:

47. Other motivating factors included the frustration over the less-than desired efforts demonstrated by the military.... The people had then developed a collective and

nationalistic faith in their resolve to take the defence of their country and their livelihood with or without their armed forces. The CDF symbolised that determination.

49. It needs to be stated here that the role played by the CDF was at considerable cost to the Government. The numerical strength of the CDF nationwide was, towards the end of the war, given as 86,000 men.

48. The CDF continued to play significant roles in providing the necessary leverage at critical stages for Government to tilt the scale to its favour - first against the RUF and on many occasions against the combined forces of the RUF and AFRC. For this reason, the CDF became a household name as the people embraced it as the viable option. They provided the leverage at the 1996 elections; they were the vanguard of the ECOMOG-led force that countered the AFRC/RUF junta; they provided the leverage when the RUF misbehaved again and again - notably during the May 8, 2000 problem; they helped to send a clear message to all renegades that the people meant to realize the peace promised by my Presidency sooner rather than later, by the end of 2000.

50. The logistics support and the disbursement of the funds to the CDF was through their National Civil Coordinator, with whom their administration and supervision lay. The funds were provided direct from the Ministry of Finance through the Ministry of Defence.

51. As President, I did not and could not have interfered in the operations or the internal organization as I was not a member of the Society to which all the members of the CDF had to belong and which created a bond among them. My role was confined to ensuring that Government provided the required funds and logistics and to insisting that the membership of the CDF was contented, motivated enough to perform their security roles.

Counselor Savage would keep in mind that President Kabbah's testimony above would more likely than not constitute command responsibility, if it is coupled with failure to prevent, halt or punish subordinates in the theatre who commit grave violations of the laws of war. For instance, President Milosevic was indicted in part for Command Responsibility for the following acts similar to what President Kabbah claimed to have done as President:

"Slobodan MILOSEVIC, acting alone and in concert with other members of the joint criminal enterprise, participated in the joint criminal enterprise in the following ways:

- a. provided direction and assistance to the political leadership of the SAO SBWS, the SAO Western Slavonia, the SAO Krajina and RSK on the take-over of these areas and the subsequent forcible removal of the Croat and other non-Serb population.
- b. provided financial, material and logistical support for the regular and irregular military forces necessary for the take-over of these areas and the subsequent forcible removal of the Croat and other non-Serb population.
- c. directed organs of the government of the Republic of Serbia to create armed forces separate from the federal armed forces to engage in combat activities outside the Republic of Serbia, in particular in the said areas in Croatia and the subsequent forcible removal of the Croat and other non-Serb population.

d. participated in the formation, financing, supply, support and direction of special forces of the Republic of Serbia Ministry of Internal Affairs. These special forces were created and supported to assist in the execution of the purpose of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3 and 5 of the Statute of the Tribunal.

e. participated in providing financial, logistical and political support and direction to Serbian irregular forces and paramilitaries. Such support was given in furtherance of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3 and 5 of the Statute of the Tribunal.

As may be readily seen from the indictments of Milosevic and Karadzic's, a leader may be charged for acting in a presidential manner when he provides logistics, supplies and financial resources to militia or state armed forces but fails to order them to avoid violations of the laws of war. The Appeal Chamber affirmed Dusko Tadic's conviction for command responsibility on this same question when it decided that,

"The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group". (see Prosecutor v. Dusko Tadic, IT-94-1, Appeals Chamber Judgment, 26 January, 2000, at para.137.

This notion of the Tribunal was emphasized by the Decision in the Celebici case when it adjudged.

"That military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary and conventional international law. This criminal liability may arise either out of the positive acts of the superior (sometimes referred to as "direct" command responsibility) or from his culpable omissions ("indirect" command responsibility or command responsibility strictu sensu). Thus, a superior may be held criminally responsible not only for ordering, instigating or planning criminal acts carried out by his subordinates, but also for failing to take measures to prevent or repress the unlawful conduct of his subordinates."

In vogue with his argument that civilian leaders are unaccountable for war crimes, Counselor Savage interposed a related notion on quick sands:

"But we are yet to see any of these leaders prosecuted for assuming such responsibilities, as there are no basis for this in law. Even the Americans, with their victor's justice, after Second World War and the trials that followed which is the basis of 'command responsibility' rules, prosecuted General Yamashita, the Japanese military commander, but not Emperor Hirohito, even though he was intransigent in his refusal to surrender before the atomic bomb was dropped on Japan."

Counselor Savage has forgotten that while the Emperor was spared prosecution for other reasons not related to command responsibility, other civilian leaders were in fact charged for command responsibility in that Far East tribunal after World War II. In every law journal on this subject, the notion of civilian liability has been stated writ large. For example in the journal *International Studies Perspective*, Professor James Meernik of the University of North Texas states what Counselor Savage ignores:

"Since World War II, however, a number of new precedents in international law have found that civilians in positions of authority in government and in the private sector are responsible for their subordinates as well. There were a number of civilian authorities in the post World War II tribunals, especially in Japan, who were tried and convicted for their failure to prevent or punish violations by their inferiors of international laws of war (e.g., Japanese Prime Minister Tojo and Japanese Foreign Ministers Hirota and Shigemitsu). In fact, Hirota was judged criminally liable in part for having failed to use his informal influence in the councils of government to stop violations of international law." (*International Studies Perspectives* (2004) 5, 356-377).

Continuing to elaborate on his quest to immunize civilian leaders, Counselor Savage digressed into other doctrines not quite related to the present debate. He asserts that anything done by President Kabbah would be legally excused because he was safeguarding the nation. On this new ground of defense, our learned gentleman writes groundlessly,

"it is the duty of every leader of to ensure the safety and protection of its citizens. To fulfil this, he or she should employ all necessary but legal means to this end. IF President Kabbah as Commander-in-Chief took necessary actions to protect the lives and property of his people, I see nothing criminal or illegal about such acts. If anything we should congratulate him for living up to one of his major responsibilities as head of state. To not do so, he would have been rightly condemned as a dereliction of one of his duties."

Mr. Savage overlooks something larger than what he professes above. His assertion resembles the late Renaissance doctrine of Reason of the State. That a President may take extra-constitutional measures to safeguard the nation is irrational in this age. The doctrine of the '*raison d'état*', where the highest power in the state - the sovereign is itself not bound to any legal norm as earlier stated by Bodin, Filmer and other supporters of absolute monarchs is out of fashion now. The epoch for such extra-constitutional ideas is over. Modern constitutionalism, international humanitarian law and of course the Geneva Convention have vacated these ideas. It is freely conceded that what Giovanni Botero professed in his 1589 book, *Ragione de Stato*, may be sometimes employed is agreeable when held under the law of the Twelve Tables - *salus populi, suprema lex* or the safety of the people is the supreme and cardinal law to which all laws are to stoop.

Thus argued Machiavelli in the *Prince*, that almost any action of a ruler is justifiable if it contributes to the peace, prosperity, and stability of the state. But Counselor Savage would bear in mind that none of these principles of political epochs antecedent to our

modern democratic nations would excuse violations of the laws of war under international law.

But we must go back to our argument by turning now to the basis of statecraft which if had neglected or never undertaken could lead the Prosecutors at the Special Court to take a long hard look at the probable testimony of President Kabbah at the Special Court in conjunction with the mounting evidence in both the Trial Chambers and the Appeals Chamber. Thus, we next have in mind the notion interposed by Counselor Savage that President Kabbah was a "hands-off" leader at war with the RUF. We trust the reader knows Mr. Savage is not representing President Kabbah, although he does a good job in debate.

FAILURE TO HALT, PREVENT AND PUNISH WAR CRIMES

Counselor has also argued with justification that President Kabbah cannot be tied to his subordinates in the CDF. That implies that allegations of war crimes by the CDF cannot be imputed to civilian leaders as Mr. Savage has been arguing. But it would be impossible to imagine and implausible to argue that the amputations of civilians among the egregious crimes committed by the various belligerents during the RUF war were ever unknown to civilian leaders. Counselor Savage the proponent of the argument that only military commanders would have been privy to such grave breaches of international humanitarian law, asserts that since President Kabbah or other civilian leaders were not in the theatre of the conflict, they cannot be accountable for violations of the laws of war. But the law governing the failure to halt, prevent and punish violations of war crimes has been alleged against civilian leaders based on international law and customs of war. For instance, the 1977 Additional Protocol I to the 1949 Geneva Conventions on the Protection of Victims of International Armed Conflict did set forth regulations regarding the "Duty of Commanders". Article 86 of Additional Protocol I holds commanders liable for failing to act to prevent violations if they:

"Knew or had information which should have enabled them to conclude in the circumstances at the time, that a subordinate was committing or was going to commit such a breach of the Conventions or of this Protocol and if they did not take all feasible measures within their powers to prevent or repress the breach.

The Trial Chamber in Celebici has also held that

"a superior can be held criminally responsible only if some specific information was in fact available to him that would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates." *Prosecutor v. Delalic et al*, supra n. 14, at para 393.

The Statute of the Special Court follows the two international ad hoc criminal tribunals in holding civilian leaders responsible for war crimes as Section 2 of Article 6 of the Statute of the Special Court states

"the official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

Nor does the argument now being made by Counselor Savage clear civilian leaders if they claim that they did not know of such war crimes:

"The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

The question then arises whether or not civilian leaders were aware of war crimes against civilians and whether they had ever heard of children, adults were been hacked in the course of the conflict and if they did, what steps they undertook to halt such violations. Reports of the maiming of hundreds and thousands of civilians, unconnected to combat were commonplace worldwide as Human Rights Watch, Amnesty International, the International Society of the Red Cross condemned these grave breaches of war. That no political or civilian leader knew or had reason to know of these violations of the laws of war would boggle the mind.

A question that a hard-nosed prosecutor may ask is whether civilian leaders in prosecuting the RUF war, issued orders to military commanders to ensure that the laws of war were obeyed. In most nations of the world, the President designates a member of Cabinet to be in charge of Defence. That Minister or Secretary undertakes the responsibility of for the defense of the nation. In Sierra Leone, the President being the capstone of power reserves that responsibility to himself. He is the substantive Minister of Defence and the Deputy Minister of Defence is merely his acolyte. This then brings us back to the framing of statecraft. It would thus be sophistry to argue that the President of Sierra Leone cedes all command responsibility of the troops in the theatre to operations commanders and there is no nexus in the chain of command.

A leader at war would more likely than not issue such orders as civilian leaders such as Dr. Karadzic had done to avert allegations of failure to prevent war crimes. It was Attorney general Solomon Berewa's duty to advise President Kabbah that undertaking to finance, organize logistics and arm the CDF would make those paramilitary groups de facto if not de jure armed forces of the Republic of Sierra Leone.

It would have been the Attorney General's duty to request the Law Officers Department to drafts Orders for President Kabbah to issue to all CDF forces that it was their obligation to obey the laws of war just as the Republican Sierra Leone Military Forces would have been equally reminded in Field Manuals on Land Warfare that such laws must be obeyed.

To illuminate this point we are making, Professor Anthony D'Amato will be our guide. He has underscored this point of statecraft in his article, "OBSERVATIONS ON THE FORTHCOMING MILOSEVIC TRIAL" in the Jurist, that a political leader would mount a good defense against charges of command responsibility if he undertakes to order or have his legal advisors prepare for him to issue to the troops to avoid violations of the laws of war,

"For an affirmative defense, it is more likely that Milosevic will produce a long list of orders, commands, directives, signed documents, and minutes of meetings at which he presided, all to the effect that war crimes will not be tolerated and anyone who commits them will be prosecuted to the full extent of Yugoslavian law. Surely his legal advisers would have prepared many documents for him to sign during his Presidency. They would be scandalously guilty of malpractice if they had not at least learned this lesson from the Yamashita case."

The reference to malpractice is to the very subject we have been discussing - Statecraft. That it be undertaken deftly or risk such malpractice. I urge Counselor Savage not to take this citation merely I am making. Let him regard who Professor D'Amato is. He is the Judd and Mary Morris Leighton Professor of Law at the Northwestern University School of Law, where he teaches International Human Rights, International Law, Jurisprudence and Justice and the Legal System. Professor D'Amato was the first American attorney to litigate a case in the European Court of Human Rights. Must I say more on the bona fides of his credentials?

Thus, contrary to Counselor Savage asserting that President Kabbah was a "hands-off" civilian commander of the war, he should have been engaged as all political leaders customarily do when at war. In the execution of Orders for example President Karadzic issued the following Orders to stave off violations of the laws of war. Now standing trial at the Hague, he has produced over 30 Orders as evidence that he attempted to prevent, halt or punish troops who might have been committing war crimes. The following Orders are typical of his Orders:

"OFFICIAL GAZETTE of the Serbian Nation in Bosnia and Herzegovina
Number 9, Saturday 13 June 1992, Sarajevo

"On the basis of Article 174, paragraph 1 point 14 of the Law on the Armed Forces of The Serbian Republic of Bosnia and Herzegovina (Official Gazette of the Serbian Nation in B-H. No. 7/92) the President of the Presidency of the Serbian Republic of Bosnia and Herzegovina makes the following

O R D E R

CONCERNING THE IMPLEMENTATION OF INTERNATIONAL CONVENTIONS OF WAR IN THE ARMED FORCES OF THE SERBIAN REPUBLIC OF BOSNIA AND HERZEGOVINA

1. The Armed Forces of the Serbian Republic of Bosnia and Herzegovina (hereafter the Armed Forces) and the Serbian Ministry of the Interior apply and respect the international conventions of war in armed conflict. International conventions of war as used in paragraph 1 denotes : - international agreements signed or ratified, that is

accepted by the ex-Socialist Federal Republic of Yugoslavia, - the rules of international customary law governing the conduct of war. - the generally recognized principles of international law governing the conduct of war.

2. The Commanders and officers of the Armed Forces and any other member of the Armed Forces or other armed organization participating in conflict are responsible for the application of the international conventions of war. It is the duty of officers to initiate prosecution invoking the full sanctions of the law against individuals under their command who offend against the international conventions of war.

3. The Ministry of Defense of the Serbian Republic of Bosnia and Herzegovina is empowered to make directives on the treatment of prisoners of war.

4. So that the international conventions of war are understood the Armed Forces will hold regular training sessions.

5. This order comes into effect on the publication of the Official Gazette of the Serbian People in B-H and the instructions for the treatment of prisoners of war form a constituent part of it.

Number 01 - 53/92

13 May 1992

The President of the Presidency of the Serbian Republic of B-H

Dr. Radovan Karadzic"

Samuel Hinga Norman's counsel might ask President Kabbah, Chairman of the War Council, Chairman of Defence Council, Minister of Defence and Commander-in-Chief of the Armed Forces of the Republic whether in adopting the services of the CDF, by financing and arming them, he also issued them Orders such as other civilian Presidents have done while in the throes of war.

To illustrate the other point, here is a specimen of an Order issued by President Karadzic, to conduct an investigation upon information on violations of the laws of war.

"On the basis of Article 80, paragraph 1, point 7 of the Serbian Republic of Bosnia and Herzegovina Constitution and Article 7 of the Law of amendments and additions of the Constitutional Law for the Constitution's implementation, the Presidency of the Serbian Republic of Bosnia and Herzegovina, at its session held on 3rd July 1992, issued the following

O R D E R

TO CARRY OUT AN INVESTIGATION INTO THE ACTION OF PARAMILITARY GROUPS IN THE REGION OF THE MUNICIPALITIES OF GACKO AND NEVESINJE

1. The Ministry of Internal Affairs of the Serbian Republic of Bosnia and Herzegovina is ordered to carry out an investigation into the action of paramilitary groups in the region of the municipalities Gacko and Nevesinje.

2. After the completed investigation the Ministry will present a detailed report on the established facts in the region of above-mentioned municipalities to the Presidency.

Number: 01-223/92

3 July 1992

THE REPUBLIC PRESIDENT

Dr. Radovan Karadzic"

The question that impinges on this issue of statecraft is this: Did Attorney General Solomon Berewa prepare or cause to be prepared such orders as Karadzic issued for President Kabbah. Or to put in alternatively, did President Kabbah request that such orders be prepared for him to issue to the CDF, those paramilitary groups not having the savoir faire in the Law of Land Warfare?

CONCLUSION:

Let us recapitulate these deliberations. We have argued here the general theory of international humanitarian law governing Command Responsibility. We have relied on the public record of the TRC and precedent to shore up our earlier debating points of departure from our compatriot Mohamed Savage. He has made good points of argument by supposition. He has cited legal examples as vessels to hold his views. But alas, we still await controlling legal authority from International Humanitarian Law to ward us off from our deeply held views. We have looked in the dark recesses of his fine and learned mind. But we ask leave to conclude these deliberations now. We may still return to sweep the cobwebs of Counselor Savage's argument.

Our parting shots are these: We have stated that statecraft should efficiently be undertaken by our leaders with energy to avoid enfeebling the conduct of government such as the prosecution of war. We have cast doubt on the negotiations of peace accords and the Special Court. We have inveighed some of Counselor Savage's arguments and discounted others, that civilian leaders like military commanders are responsible for violations of the laws of war under certain circumstances. There is a preponderance of evidence in case law, substantive law in the Statutes of all the ad hoc international criminal tribunals and the International Criminal Court to dash Counselor Savage's assertions that civilian leaders such as President Kabbah are not responsible for the violations of the laws of war by subordinates in the theatre if they knew and did not prevent, halt or punish such violations.

What is more, we have cited the indictments of civilian leaders, case law, and the opinions of legal experts to ascertain our argument that the door remains open to indict more people likely connected with the violations of the laws of war. Our argument should not be understood to cast aspersions of criminal responsibility on the ongoing investigations by the Special Court. The thing to keep in mind is the standing order of the Prosecutors at the Special Court: "We shall go wherever the evidence takes us." In that regard, whither the Prosecutors to State House?