

**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:

Monday, 6 May 2013

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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Standard Times
Monday, 6 May 2013

Sierra Leone's Terrible Period

OPINION

BY: ISSA B. M. KAMARA

As you gone through some of these pieces before, one thing for certain is that you will get a feel of what this country and its people have gone through. Some of the after effects of that war and military coup of Johnny Paul Koroma are still with us today. His coup was of a disastrous difference to other coups in Sierra Leone, because of the unholy marriage with the most inhuman bandits called the RUF rebels.

That marriage resulted to the bitterest taste of the rebels, 'sobels' and junta boys in our capital city Freetown. January 6, 1999 (J-6) will hardly be forgotten so easily. The mayhem leashed out on innocent inhabitants will always remain vivid in the minds of the many who survived the onslaught of extreme brutality in the hands of insane and barbaric mortals. Killings, amputations, burning of houses and persons, looting with utmost impunity and massive infrastructural destruction were the events that characterized January 6, 1999 (J-6).

Today as we look back on those days, we cannot but accept the stark reality that war in whatever form is not good and there is hardly a winner. On both sides of the warring factions, human lives were cut short on this earth or in this world.

It is because of that sad experience one keeps reminding our society through these articles as to avert those things that led to our self destruction, because if it happens again, it is Sierra Leoneans more that will perish. We do have the strong conviction that that day (J-6) and the entire events of 1991 to 1996 will never again happen to us as a nation. To strengthen that belief, I would want you to be quite aware and knowledgeable on the events that took place; so go ahead and continue reading from where I stopped in the last article.

soldiers and captured villagers, the rebels staged the most audacious attack on a convoy, killing over sixty civilians and soldiers. Many rebels were also killed. The survivors dispersed, and on 31st October having regrouped, attacked the gold mining towns of Kalmaroh and Mansumbirie. On Tuesday 1st November, they moved in on the old and historic town of Mabonto, whose inhabitants had fled the day before, on the same day, the prosperous and populous town of Bumbuna and site of the country's \$100 million hydroelectric project was invaded and several houses burnt.

The rebels then moved with lightening speed destroying the towns of Bendugu and Alkalia, and on the 7th November, they struck Kabala, the principal town of the northern Koinadugu district and home of the famed Tamaboroh warriors.

The rapidity with which the rebels had covered enormous territory all on foot was amazing. Between 31st October, when they attack Kalmaroh, and 7th November when they eventually hit Kabala in the far north, they had covered a distance of approximately 110 miles of very mountainous terrain.

But perhaps even more intriguing in the attacks on this region were certain salient facts. Firstly, the insurgents had covered a large swath of territory along open motor roads and familiar footpaths over a considerable distance without any opposition or interception by government forces. The latter had been kept fully informed of rebel movements along a well-defined route. The response to each attack always came a day or more after the rebels had left town.

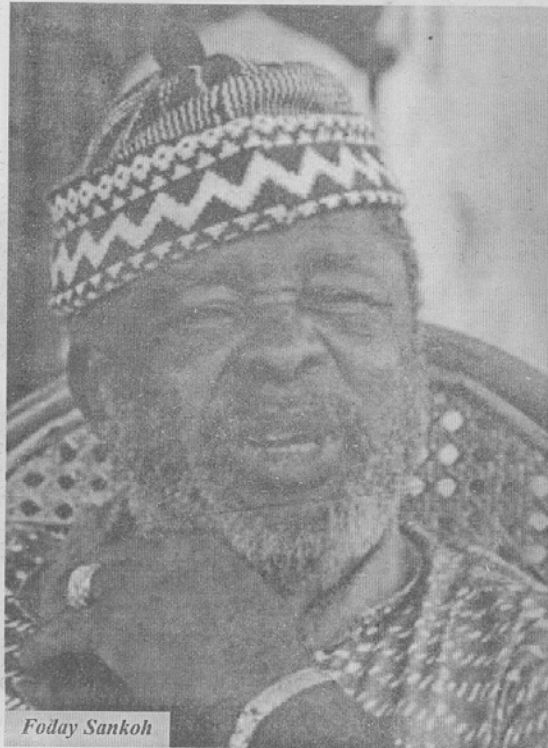
Secondly, a contingent of heavily-armed soldiers had been stationed rather irrelevantly in the junction town of Matham following the attack on Masanga Leprosy hospital town. The troops arrived days after the attacks and stayed for about a week.

They were eventually deployed in Mabonto, long after the rebels had struck Kabala and disappeared.

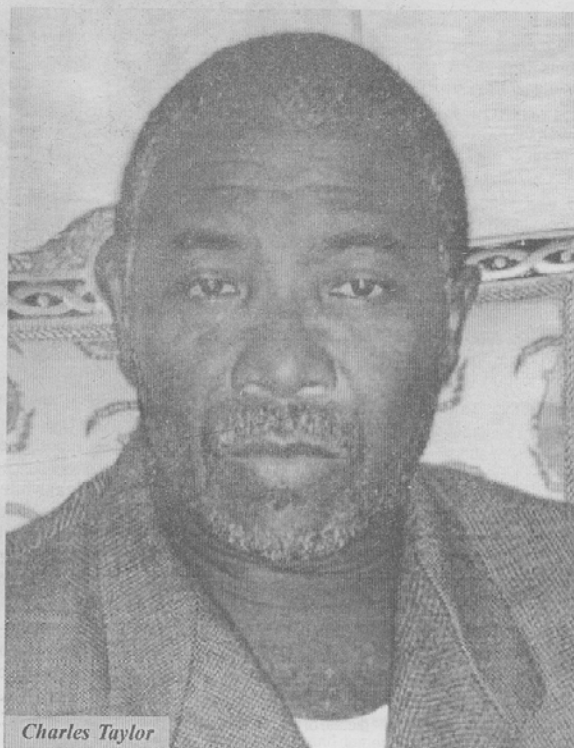
Thirdly, it had been observed by many in Kabala, that prior to the attack on the town, a military truck with heavily armed soldiers had passed through Kabala, ostensibly to interdict rebels in their northward advance. When the truck returned a day after, the soldiers were no longer on board.

Two days later these same government soldiers were widely believed, by those who had seen them previously to be part of the rebel force that invaded Kabala.

More telling was the fact that a military officer



Foday Sankoh



Charles Taylor

already a familiar sight in Kabala was to give the signal for the attack on the town at 4.00pm.

Many houses burnt in several towns were often those of specifically targeted individuals or families. In Kabala the attack seemed more out of revenge against the Tamaboroh fighters, for which their leader Dembaso Samura was viciously stabbed and clubbed to death.

The course of the war, its intractable nature, the defiance of the insurgents and the apparent inability of government forces to bring them to heel, produced a mood of deep despair and confusion among many in the military. But among the civilian population who had primarily been the innocent victims of rebel atrocities, and occasionally those perpetrated by government troops, the mood was one of anger and lost confidence in the national army.

war, and the dubious role of the soldiers in the field. In resolutions passed at the end of the deliberations, the Chiefs declared that:

- "The war should not be reduced to atrocities and feuds aimed at settling scores
- Ulimo soldiers should be withdrawn and check points manned by police and not soldiers.
- Discipline of soldiers in their fighting efforts should be enhanced.
- Chiefs should take active part in recruiting soldiers within their chiefdoms.
- Government should ensure that the army personnel at the war front be adequately catered for in order to avoid looting by soldiers."

The Chiefs also felt strongly that their personal involvement in the war especially in recruiting disciplined youths instead of thugs, could influence in a

reason...In the name of peace we should talk to those people who have influence over Charles Taylor so that these rebels can tell us what their demands are so that we can come to a point of compromise.."

The article acknowledged that the main intention of the rebels was:

"to drain the country economically, create a reign of terror and in the process make the country ungovernable." For this reason an effort should be made "to locate the leadership of the Revolutionary United Front (RUF), and pass on a message to that leadership that we in Sierra Leone are tired of the destruction and that we need peace."

This was one more instance of the sort of naivety that characterized the entire perception of the rebel conflict.

It was obvious that by mid 1993, very little in the way of concrete information was known about the whereabouts of the leadership of the RUF. And for over a year from late 1993 to all of 1994, the RUF Commander Foday Sankoh had stopped communicating with the BBC. He was by this time variously rumoured to be dead, or had fled to Liberia or was being carried in a hammock due to paralysis.

The insurgents were thus apparently lacking in an unidentifiable political leadership that could be contacted or even a central and unified military command structure. The killer commandos in the field often operated as independent units maintaining their links with rogue military officers.

By this time also, it was generally agreed that the Liberian rebels of the NPFL who had formed the bulwark of the initial invasion force were hardly any longer in Sierra Leone. The insurgents were now nationals, forcibly or willingly inducted into rebel ranks. Charles Taylor therefore had little influence over the activities of these groups by this time.

What was even more significant was the fact that by late 1994, Charles Taylor himself was facing mounting military pressure in Liberia from the forces of the Liberian Peace Council and Ulimo.

The latter had laid a crippling siege on Taylor's headquarter at Gbanga, while his NPFL organization was experiencing several defections by former close and trusted companions like his long time Defence Minister Tom Woewiyu. Woewiyu not only abandoned Taylor, but challenged his leadership of the NPFL. Taylor was fighting not only for the existence of his organization but even for his very life. The war in Sierra Leone which the NPFL had initiated was now of little interest to him.

...Taylor was fighting not only for the existence of his organization but even for his very life. The war in Sierra Leone which the NPFL had initiated was now of little interest to him...

In most places affected by the conflict, educational and medical services were now totally non-existent, while several towns had been thoroughly looted, or destroyed. In the nation's capital of Freetown which in 1991 had seemed remote and unaffected by the war, a mood of uncertainty about the nation's future stability slowly crept in, as refugees from the war zone began to trickle into the city. There were now the routine helicopter flights bringing slain Officers into the capital for burial.

It was a result of this deep frustration and a realization that even after two years of the coup, the primary goal of ending the war was still elusive, that the regime tried another solution. It was decided that since this was a rural insurrection, the chiefs who wielded local traditional authority should be formally involved in the war effort. A Conference of the nation's Chiefs was convened on 14th June 1994.

In his formal opening statement, the NPRC Chairman remarked that it was now obvious "that the war has taken an unpalatable twist that needed concerted efforts". Had lamented the dubious role of many citizens; "who knows that even in the Western Area and perhaps even in this very hall there may be rebels or rebel sympathizers."

In their candid response, the Chiefs expressed frustration at the army's apparent inability to end the

positive way the course of events. They stated that the fighting men were being neglected by their field commanders and the military authorities in Freetown. This was partially responsible for the unending looting by soldiers.

Ironically this fact had been the immediate rationale for the coup as the Junta Chairman on 30th April 1992 stated; "Our soldiers continue to sacrifice their lives on the war front in spite of very poor logistics support provided by the government whose leadership is in Freetown enriching themselves by gross misappropriation of war funds." If the Chief's Conference was impressive in organization, the result was hardly so, and the depressed mood of these traditional rulers was scarcely affected. Most Chiefs in war devastated areas were now themselves displaced citizens. Those in unaffected areas still lived in fear of both rebels and soldiers who behaved with equal banditry. But while many people concluded that only military force could overcome the rebels, others thought differently. The idea of a diplomatic solution to the conflict had been proposed before but the government had initially rejected it, in a special commentary, the New Citizen reflected the views of the proponents for such a solution, saying that:

"We must at all cost, using all our international contacts, identify these rebels and talk to them to see

The Liberian Dialogue

Saturday, 4 May 2013

Why Charles Taylor's war crimes judgment seems like A travesty of justice to Liberians

By Moco McCaulay

On April 26, 2012, the former leader of a small African nation and a feared ex-rebel leader who spread terror in his country and across West Africa—but seemed above-the-law—was finally cut to size by the swashbuckling sword of Lady Justice. It was a day that international news media heralded as: “the end of impunity!”

A fairytale-like ending you could say, especially for the people of Sierra Leone, to the atrocious story of death and destruction that had plagued West Africa during the 1990s. And the concluding narrative of the verdict that was told to the world paralleled a Mosaic redemption: a people, long subjugated to the appalling brutalities of war, had finally found respite at the Oasis of Justice after a brutal trek through the Wilderness of Injustice.



Charles Taylor in Court

Who could therefore be sacrilegious enough as to want to sour such a narrative?

Well, one man is trying to ruin that happy ending. And, if you were Charles Taylor, the former President of Liberia, who was found guilty on that day for “aiding and abetting” the commission of war crimes in Sierra Leone, and later sentenced to 50 years in prison, you too would probably be doing everything within your power to ruin the fairytale-like ending of this narrative.

So Taylor and his team of lawyers, headed by Morris Anyah, have appealed the verdict, calling it “a miscarriage of justice.” The appeal judges are now deliberating the case and are expected to make a decision whether to uphold the verdict or overturn it at some point before the year’s end.

A Grave Danger to the Credibility of International Justice?

But, it seems it is not only Taylor and his lawyers who have tried to play the Grinch to this rousing narrative of how the righteous Wrath of Lady Justice finally struck down a murderous warlord for “aiding and abetting” crimes against humanity. Even on that day that supposedly marked “the end of impunity,” Malick Sow, an alternate judge who sat on the bench during the full length of Taylor’s trial, cast aspersions on the legal foundations on which Taylor was found guilty.

“I disagree with the findings and conclusions of the other judges, because for me, under any mode of liability, under any accepted standard of proof, the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the prosecution. And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I’m afraid the whole system is under grave danger of just losing all credibility...” Judge Sow interjected right after the presiding judge delivered the court’s verdict.

But, before Judge Sow could finish delivering his dissenting opinion, his microphone was brusquely switched off and the Venetian blinds of the public gallery was immediately pulled, leaving Judge Sow literally in the dark, while the other judges scurried off the bench.

But those were hardly Judge Sow's last word on the issue. In a no holds barred interview with New African magazine's reporter, Sheriff Bojang, Jr., the Senegalese judge didn't mince his objection to the court's decision to find Taylor guilty for "aiding and abetting" war crimes.

Accusing the other judges of "hiding to meet" during the "most important part of the deliberations, which was the criminal responsibility of the accused," Judge Sow averred that from the evidence gathered in the trial, excluding the part on Liberia, "you don't have much left" to convict Taylor.

"The only question was just one – how to prove the link between Charles Taylor and the crimes committed in Sierra Leone, and not why I entered my Dissenting Opinion. It's because I couldn't be indulgent in the face of the countless contradictions, lies, deceptions and manipulations in this trial, and conclude that the accused was guilty beyond reasonable doubt of the crimes he was charged with. You cannot conclude that there was no doubt in your mind when you see all this money spent on witnesses, and part of the money you didn't know the origin of. I didn't know where it came from," Judge Whatmust also be noted is that, not only was much of the prosecution's charges against Taylor struck down by the judges, including the crux of their case that Taylor was involved in a "joint criminal enterprise" with the Revolutionary United Front (RUF), which committed gross human right violations during Sierra Leone's civil war, but according to some legal experts, it appears that the charge for which Taylor was convicted: "aiding and abetting" the commission for international justice.

"The conclusion of the Trial Chamber in Charles Taylor seems based on uncontroversial principles. He or she who provides significant assistance to a participant in a conflict knowing that the participant is perpetrating atrocities against civilians is guilty of aiding and abetting such crimes. This is straightforward. And it leads to an interesting direction," says William Schabas, a professor of international law at Middlesex University in London, in a posting on his blog titled: "Charles Taylor Judgment Suggest a More Modest Level of Participation in the Sierra Leone Conflict."

Prof. Schabas, who was also a member of Sierra Leone's Truth and Reconciliation Commission, adds:

"Moving beyond Sierra Leone, can we not blame the French government for aiding and abetting genocide, given its support for the racist Rwandan regime in 1993 and 1994? The crimes of the regime were well-publicised, not only by an NGO commission of inquiry but also by Special Rapporteurs of the United Nations. And yet the French continued to provide assistance, in personnel, arms and ammunition, to the Habyarimana regime."

The question then is: why hasn't some high ranking French official(s) been brought to trial for "aiding and abetting" the genocide that took place in Rwanda? And for good measure, there have been reports of crimes of war by the Syrian rebels in their fight against the Assad regime, so does that mean held liable for aiding and abetting the commission of war crimes in Syria because of the US military support for the rebels?

To that question, some might rightly retort: "Hell will freeze over before that happens!"

A Travesty of Justice for Liberians

But, be that as it may, one thing must be made crystal clear: this is certainly NO attempt to "defend" Charles Taylor as it were, a man who is responsible for great sufferings and death of thousands of people in Liberia, and for that matter, Sierra Leone.

What most Liberians struggle with though is that, notwithstanding all the death and destruction Taylor wrought upon their nation warlord-extraordinaire of the Liberian civil conflict, which resulted in over 250,000 deaths, why is there such an apparent attempt to twist the arms of Lady Justice to convict Taylor for war crimes committed in Sierra Leone when the preponderance of evidence of Taylor's culpability for war crimes points to Liberia?

That for quite a number of Liberians—and notwithstanding the world's leading media concoction of this fairytale-like narrative of Taylor's verdict as being “the end of impunity”—makes the whole affair, more than a year later, seem like such a travesty of justice!

And this is magnified all the more when the country's former warlords, who along with Taylor were found liable by Liberia's Truth and Reconciliation Commission (TRC) to bear the greatest responsibility for “gross human rights violations and war crimes” during the country's 14-year atrocious civil war their crimes, and in effect, thumb their noses at the system of international justice.

A case in point, FrontpageAfrica, one of the country's leading dailies, recently quoted Prince Johnson, a former Liberian warlord notorious for using his silver pistol to publicly execute people for all manner of whimsical reasons during the height of the Liberian civil carnage, blatantly saying that he has “no remorse” and castigating Jerome Verdier, a human rights lawyer and the former head of the country's TRC.

“Jerome Verdier needs to go to a mental home. When he wrote that bogus report that was filled with nothing but incrimination without evidence—that report was thrown into the garbage bin. I knew from the onset that report would never go anywhere because you don't incriminate prominent people in this country without evidence,” Johnson, the former leader of the Independent National Patriotic Front of Liberia, reportedly said.

The TRC report, which was released in 2009, recommended that Taylor, Johnson, George Boley, Alhaji Kromah, Thomas Yaya Nimley and Sekou Damate Conneh, all former heads of rebel armies, among others, be tried for war crimes. The commission arrived at its decision based on, among other things, the statements of over 20,000 statement givers.

The Commission's report though, as Johnson so brutally puts it, has literally been “thrown into the garbage bin.” And most observers believe this is so because, Ellen Johnson Sirleaf, who is the country's president and a Nobel Peace Prize winner, was also recommended, along with other prominent Liberians, for debarment from public office for 30 years for her financial support for Taylor during the early stages of the country's civil war.

So while justice hangs in limbo, Liberians continue to be subjugated to such invectives by Johnson, now a Senator in the Liberian Legislature, and his ilk.

That notwithstanding, if there wasn't such an underlying tragedy to the whole affair, Johnson's tirade about “you don't incriminate prominent people in this country without evidence,” would surely be cast into the garbage bin of laughable.

Who was more prominent than Samuel K. Doe, the former president of Liberia who Johnson captured and tortured to death, recording much of the sadistic spectacle on video? And what evidence did he have against President Doe, might we ask? At least for Johnson, the TRC has gathered a trove of evidence against him which has been cast into the “garbage bin,” a fact that must certainly be sweet music to his ears.

But, if Taylor's verdict is to be seen by Liberians as simply a case of the righteous tide of justice running its course as some would into those 20,000 statements to try Taylor, along with Johnson and the others for

their crimes in Liberia? And in Taylor's war crimes trial in particular, this might after all present a tighter legal case, rather than as it seems, subjecting the whole system of international justice to a spectacle of double-standard justice, and as Judge Sow warned, putting the whole system in "grave danger of just losing all credibility"?

Otherwise, it remains exceedingly hard for Liberians to buy into the fairytale-like narrative of "the end of impunity" because, as far as they are concerned, it is just that: a fairytale.

The Guardian

Friday, 3 May 2013

<http://www.guardian.co.uk/books/2013/may/03/aminatta-forna-life-in-books>

Aminatta Forna: a life in writing

'Africa scares the west, but there's as much reason to be scared in Croatia as in Sierra Leone'



-SNIP-

One of her cousins ("a very scary person") was in the West Side Boys, a rebel splinter group, and "many families had members on both sides". Perhaps partly for that reason, she has seen "great acts of forgiveness". But, in such a small country, there have been haunting outcomes, such as a case she fictionalised of a woman returning from a refugee camp to find her daughter married to the man who had beheaded her husband. "I was so blown away by this story, I couldn't breathe. How do you deal with the horror of that?"

Although it was "psychologically important for trauma victims to bear witness", she feels the UN-backed **special court for Sierra Leone** was the "judicial process at its most absurd, with American lawyers being paid six-figure salaries, which made everybody sick". When the former Liberian president Charles Taylor was found guilty at the Hague last year of war crimes in Sierra Leone, "nobody gave much of a damn because he was remote for us. He was a catalyst, not the only culprit."

-SNIP-

The Independent (Ireland)

Saturday, 4 May 2013

Irish UN Lawyer: 'Nobody is above the law - even heads of State'



Dearbhail McDonald Legal Editor in The Burren

THE "old era of impunity" from genocide, ethnic cleansing, crimes against humanity and war crimes is over, according to the Irish lawyer who advises the United Nations.

Barrister Patricia O'Brien, the Under-Secretary General for Legal Affairs and the United Nations Legal Counsel - which advises the powerful Security Council - said that the use of sovereignty as a barricade against international justice is "gone".

"Nobody is above the law, in particular heads of State," said Ms O'Brien, keynote speaker at the 20th annual Burren Law School in Ballyvaughan, County Clare.

Ms O'Brien said that the responsibility to protect civilians in Syria was at the forefront of the UN's efforts, but said the UN was poised to investigate the use of chemical weapons, an issue that had been the subject of intense debate in recent weeks.

The mother of three said it is "virtually impossible" to provide assistance to some 6.5m people living there in a three year conflict which has seen the deaths of more than 70,000 and 1.4m people displaced.

"Syria has long reached the threshold of a non international armed conflict," said Ms O'Brien, who heads an office composed of 60 different nationalities. Ms O'Brien said that international law is no longer the preserve of international courts and institutions.

Her first major task after she took office in August 2008 was the bombing of Gaza in 2009 and dealing with the uprising in Libya as well as the recent concerns over the use of chemical weapons in Syria.

Ms O'Brien, a former legal adviser to the Department of Foreign Affairs and the Office of the Attorney General, said that despite low levels of prosecutions, the work of a series of international criminal tribunals and courts had illustrated the importance of the rule of law.

The early 1990s and 2000s - when the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were "historic periods" in terms of international criminal justice.

Ms O'Brien, who says she was "an outsider" when she joined the UN in 2008, said that the recent prosecution at the **Special Court for Sierra Leone (SCSL)** of former President of Liberia, Charles Taylor, had sent "a strong message" to world leaders, adding that they are "more conscious of their vulnerability to accountability".

The Burren Law School is this year guest directed by James Hamilton, the former Director of Public Prosecutions (DPP) and President of the International Association of Prosecutors.

The Burren Law School will also feature contributions tomorrow (SUN) from Supreme Court Judge Mr Justice Frank Clarke; former Supreme Court Judge Mrs Justice Catherine McGuinness, Independent TD Shane Ross as well as historian and Professor Paul Bew of Queens University, Belfast.

Earlier today Irish historian Donnchadh O'Corrain, said that he was troubled at the prospect of Ireland marking the centenary of the 1916 rising and other centennials.

Mr O'Corrain, said that as the centenary advances, Ireland should concentrate on culture, which it was good at, instead of politics, which it was not.

"We should process, not march," said Prof O'Corrain who questioned the use of flags and army personnel at forthcoming 1916 ceremonies.

"Do we need to be reminded that most of our violence was directed against ourselves?," asked Prof O'Corrain who said that the term "the troubles" to describe the violence in Northern Ireland was a euphemism.

"It was a civil war," he said.

The Global Coalition for Conflict Transformation

Thursday 2 May, 2013

International criminal law – justice or mirage?

It is indefensible to ignore the debate on international criminal law, all the more when the pretext for doing so involves relying upon the misery of war crimes victims as a means of perpetuating a branch of the legal profession. Humanity improves by examining vexed subjects until the best ideas win. To stifle debate is to suppress the social progress to which we surely all aspire.

What are the principles of conflict transformation?

By Matthew Parish

On 10 April 2013 I had the honour to be invited by H.E. Vuk Jeremić, President of the United Nations General Assembly, to moderate a panel discussion before the world parliament. The discussion was part of a thematic debate on the role of international criminal justice, twenty years after the establishment of the International Criminal Tribunal for the Former Yugoslavia. The theme of the panel was justice: do international criminal courts achieve substantial justice, and at what cost?

The panel I moderated was composed of several distinguished participants, including General Lewis Mackenzie, former UNPROFOR Commander for Sector Sarajevo; Professor Charles Jalloh, Professor of Law at the University of Pittsburgh and a renowned commentator on the International Criminal Court; John Ciorciari, Professor of Public Policy at the University of Michigan; and Savo Štrbac, President of VERITAS, a Belgrade-based NGO cataloguing war crimes committed in the Yugoslavian wars.

The debate was extended and comprehensive, as each speaker brought experiences of international criminal justice in different parts of the world to bear to the discussion. There were a number of cross-cutting themes. Amongst them, no fewer than five principal topics prevailed.

The growth of international criminal law

The first issue is one of historical perspective: why has there been such a proliferation of international law in just the last twenty years? The first international criminal trials in modern times followed the end of the Second World War. But then there was a hiatus of almost 50 years before the next international criminal court, the International Criminal Tribunal for the former Yugoslavia (ICTY), was created by the United Nations in 1993. In the intervening period there were many wars all over the globe and, as is inevitably the case in every war, many war crimes. But none of those crimes were prosecuted, and the idea of war crimes prosecutions lay fallow until the wars in the former Yugoslavia. What changed in the intervening period?

The answer is complex, but reasons may include the end of the Cold War; the emergence of a single superpower with a distinctive view of international law; the failure of the international community effectively to respond using military and diplomatic means to the unfolding civil war in the former Yugoslavia; and a sense of international shame prompted by mass media depictions of the atrocities of war. In short, the establishment of the first recent international criminal tribunal may have been driven more by a sense of guilt on the part of the international community, than a coherent and clearly articulated policy goal.

The notion that one might instead wait until the Yugoslavian wars were over, and then try criminal defendants in home courts, appears not to have been considered at all at the time. Instead the desire to internationalise the trying of war crimes became widespread elsewhere. Once the precedent had been set with the ICTY, Rwandan, Sierra Leonean, Cambodian, East Timorese and Lebanese analogues followed. A trend had been set that continues to the present day, with the emergence of the International Criminal Court to try war crimes committed worldwide.

International justice: at what cost?

The second question to be addressed in the context of international criminal justice is the cost and time involved. By any domestic standards, it is phenomenally expensive and slow. In the years 2008-2009, the ICTY had a budget of

US\$188 million. The International Criminal Tribunal for Rwanda (ICTR) has been spending well over US\$100 million a year. These figures dwarf the costs of domestic criminal courts. London's Old Bailey, perhaps the world's best known criminal court that tries the most serious of offences committed in England, has a budget of just a few million dollars a year. Yet its caseload is immeasurably higher, trying perhaps 500 to 700 exceptionally grave offences per annum.

By contrast the ICTY has indicted a total of only 161 defendants in the course of twenty years of operation; the ICTR half that. Moreover the time spent on each case is extraordinary. Vojislav Šešelj, who voluntarily surrendered to The Hague in 2003, has been there ever since without even a first-instance verdict being rendered. Six to seven years has become a normal period for the trial cycle. In the ICTR there are several defendants who have been in custody without a final verdict since 1996. Detention on remand for over ten years is the norm.

Despite meagre caseloads and massive budgets swallowing billions of dollars in total, international courts seem incapable of managing their caseloads in accordance with the most elementary standards of good practice. In any domestic system of criminal justice, delays of this kind would be a national disgrace. So would the lackadaisical approach of the International Criminal Court. Despite being established in 2003, it has so far completed only a single trial notwithstanding absorption of hundreds of millions of dollars in international taxpayers' money. The ICTY and ICTR have each spent tens of million dollars per case completed. Their record is so derisory almost as to defy belief. One of the enduring mysteries of international criminal justice is how a profoundly desultory and wasteful system could be created and then permitted to continue unchecked.

What is international criminal law? Is it law at all?

The third question that arises is one of jurisprudence: the relationship between domestic and international criminal law. International criminal courts do not employ conventional categories of criminal offence found in domestic law. This curiosity calls for explanation.

Many or even most war crimes involve murder. In virtually every domestic legal system, the crime of murder is carefully defined. For example in the common law tradition, it involves two components: an *actus reus*, meaning a positive physical act which causes the death of another; and a *mens rea*: a mental state of the defendant, involving an intention to cause death or serious injury, or a conscious awareness that death may occur. Negligence, or failure to anticipate, are not enough. Doctrines of group responsibility also exist, such as conspiracy; but they require active participation in the *actus reus* and strictly circumscribe liability where co-participants lacked the requisite *mens rea* of the primary offence.

In international criminal law, these distinctions and subtleties have been washed away. Instead the categories of criminal responsibility created are wide and ambiguous. A doctrine of group military responsibility has been developed, but without any of the detailed discriminations found, for example, in the domestic criminal law defence of duress.

What if a person was conscripted into an army, or forced to participate in a military operation now deemed illegal? What level of threatened sanction for disobedience excuses them from criminal responsibility? The general answer in international criminal law, unlike in domestic law, is none.

Worse, defendants may be found guilty of failing to prevent crimes committed by others, even if they did not know those crimes were taking place. Perhaps most alarming of all, the emergent doctrine of "joint criminal enterprise", a chillingly flexible theory of criminal liability, permits an international criminal court to conclude that all the participants in a military operation are guilty for the crimes of a single individual, even if none of the other participants knew that the crimes in question were being committed.

This is a doctrine of collective responsibility. It was promulgated in the very first case before the ICTY, *Prosecutor v Tadić*. Mr Tadić was a member of a Serb militia who entered a village in Bosnia. When the militia left the village, several villagers were found dead. There was no evidence that Mr Tadić played any part in their deaths or had even seen them. Nevertheless he was convicted of their murder. He was deemed part of a joint criminal enterprise that resulted in their deaths. Since that case (1997), this uncircumscribed doctrine has been applied in ever more cases and in ever more flexible ways. The greater majority of international criminal prosecutions now rely upon this

theory of criminal responsibility. Why is this doctrine, a new legal theory developed quite separately from any theory of domestic criminal law, so prevalent?

Conviction rates

This leads to our fourth question, one of why conviction rates before international criminal tribunals are so exceptionally high. Before the ICTY, the conviction rate on a not-guilty plea is almost 90%. This contrasts alarmingly with conviction rates before domestic criminal courts. In the United Kingdom, jury trials on a not-guilty plea typically result in a conviction rate of slightly more than 40%. The reason why convictions before international criminal courts are so frequent may be because the legal tests being used to determine a defendant's liability are sufficiently flexible to render a finding of guilty highly likely.

Does this reflect the reality of moral culpability in armed combat? Amidst the fog of war, is it proper to draw the net of criminal liability so widely that the vast majority of both military and political actors are deemed guilty of serious crimes? The concern here is about the existence of an inherent incentive on the part of judges to make findings of guilt. Their desire to do this may be to make their own names in securing conviction of persons adjudged responsible for crimes of historical significance. If this is indeed the dominant judicial incentive, then the flexible jurisprudence of joint criminal enterprise those judges themselves fashioned may assist them in achieving their goal.

Moreover the statistics reveal partiality in the ethnic identity of those prosecuted and convicted. At the ICTY, substantially more Serbs have been prosecuted, and sentenced to substantially longer sentences of imprisonment, than any Croats, Bosnian Muslims or Kosovar Albanians. One might retort that this statistic can be explained by a hypothesis of higher rates of war crimes committed by Serb forces and their participation in three separate wars under the Tribunal's jurisdiction (Croatia, Bosnia and Kosovo). But that theory, even if substantiated by facts, could not explain the substantially higher conviction rates (as opposed to prosecution rates) for Serbs than for other national groups. It is hard to understand why evidence against Serb defendants is intrinsically likely to be stronger than evidence against other defendants. The only credible explanations are either prosecutorial bias (prosecutors put more resources into trials with Serb defendants) or judicial bias in convicting defendants.

Statistics matter, because they reveal patterns in judicial decision-making that become hard to explain away without inferences of partiality. These patterns are every bit as concerning as the patterns revealing far higher rates of incarceration of black males in the United States than their due share of the country's population. They suggest that something in the system of criminal justice has gone fundamentally wrong.

What is the purpose of international criminal law?

This brings us to our final question about the role of international criminal courts: the policy goals being pursued in internationalising war crimes prosecutions. Since war crime trials reveal a pattern of only the losing side being prosecuted, they may create perverse incentives: a desire to win the war at all costs to avoid prosecution may mean that no holds are barred and hence war crimes may become more likely.

The prospects of war crimes trials also creates an incentive for senior wartime leaders not to step down or agree armistices, lest they subsequently be prosecuted after leaving power. There is a compelling argument that war crimes trials exacerbate the wars whose crimes they exist to try, and make those wars harder to conclude. There is scant evidence war crimes trials have any deterrence effect at all. Wars are ended by military victories or diplomatic compromises, not by judges. Likewise there is little evidence that international trials promote post-war reconciliation: undertaken at an often wide cultural and geographical distance from the fighting, those trials are often barely understood by the local population and the process is frequently perceived as unsatisfactory and unfair by all sides to a civil conflict. Whatever the outcome of a trial, old wounds are reopened that might better have been left closed.

In the face of these flaws, why do international criminal courts persist? The answer may be more to do with writing history than adjudicating guilt. In international criminal justice we are at risk of watching lawyers steal grounds from historians. In wars the truth is often hard to divine, as each side has its own competing narrative. Political considerations may determine which narrative prevails in the immediate post-war period. As politics subsides, a more nuanced version of the truth may subsequently emerge. That may prove more difficult where international

criminal courts have pronounced upon the events of war with institutional legitimacy and procedural finality. International criminal adjudications may foreclose future historical debate. It is hard to understand why this could be a good thing.

The policy issues surrounding international criminal justice are intricate and multi-faceted. International criminal law is a science in its infancy. Barely twenty years old, there is much which must be improved if the discipline is to flourish. Yet there is also a more fundamental question, namely whether international tribunals are the most appropriate venues for the trial of war crimes at all. Domestic court systems have their imperfections. Yet the countries of the former Yugoslavia and Rwanda have proven themselves capable of holding tolerably fair war crimes trials after civil conflict has subsided.

In many cases this has been done at a fraction of the cost of international criminal courts, and with fewer political shadows. The fear sceptics about international criminal law harbour is that the discipline was developed as a response to wars where the western powers felt that something must be done but could not decide what. Hence they settled on creation of international criminal courts: facially grandiose, but imperfect and ineffective. These institutions, initially the progeny of international community indecision, then mutated into a sizeable industry of questionable value, legality and fairness. Perhaps we would be better off closing this industry down.

That is the challenge facing those who would defend international criminal justice. Its champions should engage this challenge, by debating with sceptics such as me. But as a rule they refuse to do so, and the fear arises that this is due to the intellectual insecurity about the arguments they espouse. My criticisms may be misplaced, and maybe the logic of my concerns can be defused. But I am willing to debate and defend my positions, and where I have made errors to concede as much.

It is indefensible to ignore the debate altogether, all the more when the pretext for doing so involves relying upon the misery of war crimes victims as a means of perpetuating a branch of the legal profession. Humanity improves by examining vexed subjects until the best ideas win. To stifle debate is to suppress the social progress to which we surely all aspire.

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This views expressed in this paper are his own and do not necessarily reflect the opinions of any organisation with which he is or has been associated. www.matthewparish.com

Vatican Radio

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Former UN Sudan Chief sounds the genocide alarm in two Sudanese States

(Vatican Radio) Ten years from the start of the genocide in the Sudanese region of Darfur, a book is being launched that chronicles the author's struggle to bring the humanitarian catastrophe to the attention of global leaders.

Entitled "Against A Tide of Evil", the book is by Mukesh Kapila, former UN Chief for Sudan and professor of global humanitarian affairs at Manchester University .

Speaking to Vatican Radio's Linda Bordoni, Professor Kapila explains that the book focuses particularly on his traumatic year as UN coordinator in Sudan where he arrived in 2003 hopefully to oversee peace-building after a long internal war there, but found himself grappling with the suffering in Darfur.

It also raises the alarm that ethnic cleansing continues to be perpetrated in other Sudanese regions where hundreds of thousands of people, bombed out of their villages and farms, have been cut off from international humanitarian relief since the outbreak of hostilities between the Sudanese government and opposition groups in June 2011.

Professor Kapila explains that the book stems from his own life experiences and focuses on the situation in Darfur ten years ago, however it also touches on the experiences he had witnessing the genocide in Rwanda 10 years previously as well as his experiences in Srebrenica, Sierra Leone and Afghanistan.

The focus – he says – is on his efforts to grapple against the crimes against humanity in Darfur, but "the journey begins in locations in many other places".

Kapila says he knew what was going on from day one. When he got to Sudan in April 2003 "the evidence soon became clear that what was going on was an orchestrated ethnic cleansing attempt, masterminded by the government of Al Bashir in Khartoum, targeted against tribes of black African ethnic origin, and it met all the criteria of ethnic cleansing, in other words the violence was directed at going away with a group of people and their way of life, on a permanent basis, exterminating them".

"When I brought that evidence to the attention of world leaders", he says "such as Kofi Anan who was Secretary General at the United Nations at the time, and to other senior leaders in the UN system, as well as members of the Security Council, like the British government, as well as the French, the Americans and so on, it soon became clear that this was not the kind of information that wanted to hear at that moment in time, because the world was grappling with Iraq and many other issues".

Also, he says the fact that at that moment a peace process was going on between Khartoum and Juba, and it was felt that the suffering and the violence in Darfur may have endangered the peace process. So, he continues, he was told there were other and more important things to do at the time.

So Professor Kapila decided to go beyond the leaders – who had other concerns at heart – and speak to the media. And that was when the story became well known and the Security Council was forced to act. "As soon as people became aware that there was a place called Darfur where terrible atrocities were being perpetrated, and that this was the first genocide of the millennium a lot of activists, civil society and celebrities got into action."

However – says Professor Kapila - “it was somewhat too little, somewhat too late, because by then the ethnic cleansing was complete”. So even though after Rwanda we had heard “never again” etc., we were presiding over the 1st genocide of the century.

A very important message of the book is that although the primary responsibility for the genocide lies with those who masterminded, organized and carried it out, those in charge of institutions charged with the responsibility to prevent and protect are almost equally guilty. We live in the global media age and Kapila says: “the tragedy is, that even as atrocities were unfolding in Darfur, we were able to document and gather information that was not available for example at the time of the Rwanda genocide ten years previous to that, so the fact that we did not know what was going on cannot be used as an alibi for inaction”.

“I strongly believe that those who stood by and did nothing are almost as equally culpable of those who pulled the trigger or did the stabbing”.

He says that unless the accountability of those who stood by and did nothing is properly acknowledged – at least in historical terms – the chapter cannot be closed. And the book – he says – is all about accountability at all levels. “Because if you don’t have accountability, then these kinds of atrocities will continue to happen again and again”.

And speaking of his recent return visit to the region, in particular to the Blue Nile State, the Nuba Mountains and very close to the Darfur border, Kapila says he was appalled to see the violence of Darfur is not just being replicated, but is even more intense because in the intervening years the government of Sudan has become richer, and has armed itself with modern warfare and is currently perpetrating the same kind of violence as that perpetrated in Darfur ten years ago.

So we have not just the impunity for what happened, but the fact that the perpetrators were allowed to get away with it has emboldened them to repeat what they were doing in the other regions as well.

Kapila speaks positively of the indictment of the President by the International Criminal Court and acknowledges that it is not easy to apprehend a presiding leader in a foreign country and he does not advocate revolutionary actions. However, he mentions the possibility of economic, diplomatic, trade sanctions that may reduce the means with which he wages war on his own people, and “to turn up the pressure on him, may help bring political change in Sudan”.

“So while these things are going on , resistance is mounting and it is only a matter of time for change to come, but my concern is that along the way there is more suffering to come and we must ensure that we stay in solidarity with the people who are suffering”.

The book he says, intends to be a wake-up call that should move readers to action. “Ordinary citizens all over the world have a responsibility to take an interest in what is done in their names by their governments: both acts of omission as well as acts of permission”.

It is for citizens to come together and promote positive change with all the means we have at our disposal and make sure the wrongs are righted. So it is a call for all citizens to call to account their leaders who act or don’t act in their particular names, and by doing that I hope the world will become a better a more just place”.

Mukesh Kapila’s book, “Against A Tide of Evil” is available at major bookshops and on order through Amazon.