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Terrorists, Warlords, and Thugs

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TERRORISTS, WARLORDS, AND THUGS

DAVID M. CRANE*

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INTRODUCTION

My remarks will focus on the current state of affairs related to international criminal law. I believe we are in many ways at a crossroads. Which path we take as a global community will change the face of international criminal law, maybe forever. We face many challenges, but before I review them with you all, let me tell you a bit about our work in facing down terrorists, warlords, and thugs in West Africa—very much a forgotten part of the world.

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I. THE REQUEST

In March of 1991, the tragedy of the civil war in Sierra Leone began with an invasion from Liberia into the eastern diamond fields of that back water of a country.¹ The invasion consisted of various units and criminal elements from across West Africa, including the Revolutionary United Front led by Foday Sankoh, Guineans, Burkinaps, Liberians, and Special Forces from Libya.

For over ten years, a joint criminal enterprise, led by then President Charles Taylor² on behalf of Muammar Qadhafi, murdered, raped, maimed, and mutilated around 1.2 million human beings to further its own personal criminal purposes by moving diamonds about for guns and cash.³ These guns and cash were used in the overall geopolitical plan to turn all of West Africa into a Libyan fiefdom. Many of the players in this horror were graduates of the terrorist training camps in Libya. In this internal armed conflict, the combatants committed atrocities beyond description. Sierra Leone became a killing field, truly a hell on earth.

In June of 2000, the President of Sierra Leone, Tejan Kabbah, a retired United Nations employee, wrote the Secretary General of the

1. For an overview on the events surrounding the invasion and the actors involved in the conflict, see U.S. State Dep't, Bureau of African Affairs, Background Note: Sierra Leone (Sept. 2005), <http://www.state.gov/r/pa/ei/bgn/5475.htm>.

2. Charles Taylor was President of Liberia from 1997-2003. Further information on Liberia can be found at U.S. State Dep't, Bureau of African Affairs, Background Note: Liberia (Jan. 2006), <http://www.state.gov/r/pa/ei/bgn/6618.htm>.

3. See U.N. Sec. Council, *Report of the Security Council Mission to Sierra Leone*, ¶¶ 42-43, U.N. Doc. S/2000/992 (Oct. 16, 2000) (expressing the general sentiment that Charles Taylor was connected to the illegal trade in diamonds and guns, although he denied accusations of such involvement). Commenting on former President Taylor's role in the atrocities, the Security Council report noted:

Regional leaders were clearly of the opinion that President Taylor's relationship with [the Revolutionary United Front] was a key to the situation in Sierra Leone, and that continued action was necessary to persuade him to use his influence to positive, rather than negative, effect. Illicit trafficking in diamonds and arms, the proliferation and encouragement of thuggish militias and armed groups, and the massive flows of refugees and internally displaced persons resulting from their activities must be addressed directly.

Id. ¶ 54(d).

United Nations, Kofi Annan, asking him for assistance in developing an accounting mechanism for the apparent war crimes and crimes against humanity perpetrated in his country.⁴ The domestic court system, in large part, no longer existed and was incapable in dealing with prosecuting up to 30,000 alleged perpetrators.⁵

II. THE RESPONSE

Faced with the enormity of the tragedy, the United Nations was compelled to act, despite a great deal of initial reluctance. At the time, the world was frustrated with the cost of international criminal justice. The International Criminal Court did not exist and the ad hoc tribunals were moving slowly forward with no end in sight, as neither had a prosecution plan nor an exit strategy.⁶ The cost was enormous, coming in at over 250 million dollars per year to sustain the effort in The Hague and Arusha.⁷ The Security Council was not going to sanction another ad hoc effort. The question at the time was:

4. Letter Dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the President of the Security Council, Annex, U.N. Doc. S/2000/786 (Aug. 10, 2000) (relaying the June 12th letter from Alhaji Ahmad Tejan Kabbah).

5. See Press Release, The Hon. Solomon E. Berewa, Attorney-General and Minister of Justice for the Republic of Sierra Leone, Remarks for Signing Ceremony for Agreement for Special Court (Jan. 16, 2002) (highlighting the necessity of the Special Court in holding accountable and bringing to justice persons charged with grave crimes, by alluding to its inability to deal with punishing such atrocities due to the "erosion of the rule of law" in Sierra Leone), available at <http://specialcourt.org/documents/PlanningMission/PressReleases/BerewaSpeech.html>.

6. The two ad hoc tribunals referred to are the International Criminal Tribunal for Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR").

7. See generally S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993) (establishing The Hague, Netherlands as the seat of the ICTY); S.C. Res. 977, U.N. Doc. S/RES/977 (Feb. 22, 1995) (establishing Arusha, Tanzania as the seat of the ICTR). For more specific information on the operating costs of the tribunals, see Fact Sheet General Information, ICTR, <http://65.18.216.88/ENGLISH/geninfo/index.htm> (last visited Feb. 14, 2006) (reporting the annual budget for 2004-2005 as \$255,909,500); and Fact Sheet General Information, ICTY, <http://www.un.org/icty/cases-e/factsheets/generalinfo-e.htm> (last visited Feb. 14, 2006) (reporting the annual budget for 2004-2005 as \$271,854,600).

Could international criminal justice be effectively and efficiently applied in a politically acceptable time frame?

In August of 2000, the Security Council passed a resolution calling upon the Secretary General to study the problem and recommend an alternative accounting mechanism for dealing with what took place in Sierra Leone.⁸ The result was the development of the world's first hybrid international war crimes tribunal, which would be called the Special Court for Sierra Leone. In January of 2002, the United Nations, on behalf of the international community, signed a treaty with the Republic of Sierra Leone creating this bold new experiment in international accountability.⁹

In April of that same year, I was appointed Chief Prosecutor, and I arrived in Sierra Leone in August 2002 with a ten phase prosecution plan. We were already in phase three when I arrived on that rainy day with my special assistant and political advisor, along with my Chief of Investigations. I had three suit cases and no place to live, yet we went straight to work according to the plan.

III. THE MANDATE

Our mandate was to prosecute those who bore the "greatest responsibility" for war crimes and crimes against humanity stemming from the ten-year long civil war in Sierra Leone.¹⁰ International tribunals are understood to be creatures of political events, and their conception is one of political compromise. The compromise for this international tribunal was "greatest responsibility."

The international community got it right this time. This mandate allowed me to accomplish my goals within a politically acceptable time frame. The efficiency and effectiveness aspects of the charge by

8. S.C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2000).

9. Agreement Between the United Nations and the Government of Sierra Leone on Establishing a Special Court for Sierra Leone (with Statute), Jan. 16, 2002, 2178 U.N.T.S. 137.

10. *See id.* pmb., 2178 U.N.T.S. at 138 (charging the Secretary-General and the Government of Sierra Leone to "create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law").

the Security Council were up to my plan and the hard work of the Office of the Prosecutor, working closely together with the Registrar and his team.

IV. THE EXECUTION

As I have alluded to, I developed a plan that laid out our work in Sierra Leone over a period of three to four years. The phases and milestones followed a standard common law pattern. Frankly, it was not rocket science, just good old common sense, dedication, and hard work. The plan was broken down into five parts: office set up; investigation/indictment; pre-trial; trial; and appeals. Currently, we are in part four, with part five just around the corner in 2006.

Our execution of the plan called for some unique and innovative ideas. They incorporated: (1) the creation of an academic consortium; (2) the establishment of an outreach and legacy plan that included the town hall program; (3) the setup of a witness management program; and finally (4) the institution of new charges and a new format for the indictments.

A. ACADEMIC CONSORTIUM

Designed to be an education program for law students, as well as a support mechanism for the Office of the Prosecutor, the academic consortium proved its worth by saving my office countless hours and millions of dollars in attorney time. As an education program, hundreds of law students have had the unique opportunity to be involved in a real world international prosecution. Their work product, supervised by professors, has been exceptional and has contributed to the advancement of international criminal law. The Washington College of Law has been a member and its students have been important in this overall support to the Office of the Prosecutor.

B. OUTREACH AND LEGACY PROGRAM

It must be understood that an international war crimes tribunal is for and about the victims, their families, their towns, and their districts. A busy tribunal tends to lose sight of this important fact. After all, it is the people who will have to live with the results; thus it is imperative that they understand and respect the process. This can

only be done by reaching out and having an ongoing dialog with them. We did this in Sierra Leone through our outreach and legacy program. The cornerstone of the Special Court's outreach program was the introduction of a "town hall meeting," which I originally started upon my arrival in Sierra Leone.

During my first four months in the country, I literally walked the entire countryside. I listened to my clients—the people of Sierra Leone—who told me about what took place there during the decade-long civil war. It allowed me, in some small way, to appreciate the pain and the suffering that took place. Additionally, it allowed them to see their Prosecutor and to ask him questions. During the three years this program was in place, I spoke to thousands upon thousands of West Africans, returning many times to report on how their Court was doing. Augmented by an Outreach Office within the Registry, the program became a huge success. The International Criminal Court has established a similar program, modeled on our work in Sierra Leone.

Legacy is also a key to success for any tribunal. From the very beginning we attempted many programs, some with great success. Our goal was to leave a dedicated *cadre* of lawyers, investigators, and court administrators in Sierra Leone who could begin to rebuild the devastated judiciary and begin to establish a respect for the rule of law. The legacy program is ongoing, even as I speak. I left Sierra Leone this past summer secure in the knowledge that West Africans understood that the law can be fair, that no one is above the law, and that the rule of law is more powerful than the rule of the gun—just ask former President Charles Taylor.

C. WITNESS MANAGEMENT PROGRAM

Any prosecutor worth his salt will ensure that his witnesses are accounted and cared for in an appropriate way. This is no different at the international level; yet prior to our arrival in West Africa, a program such as this had never been attempted before. Due to the fact that all of our evidence would come from witness testimony, we needed to ensure their testimony was truthful and accurate, and that they were secure in the knowledge that they would be protected, based on the threat level assessed over time.

Our intent, working with the Victims and Witness Support Unit within the Registry, was to make sure that all witnesses for the prosecution arrived safe, healthy, briefed, and with a knowledge of the process they were about to undergo. For witnesses in a third world setting with competing cultural perspectives, this could take up to two years, particularly for those child and female victims of horrors not describable in this setting. Of the five hundred witnesses who testified or who are testifying, less than one percent eventually refused to testify. Only one witness died and that was due to natural causes. This is a credit to our witness management team.

D. CHARGING AND FORMATTING

Early on in the prosecution plan, I wanted to change the way persons accused of international crimes are charged. My review of indictments coming out of the other tribunals showed that those indictments were too long, inaccurate, and fraught with potential legal land mines. This had to change.

What I finally decided was to make the indictment simple and direct. As a prosecutor in the United States, I firmly believe in the principle that if you plead it, you have to prove it. Thus we did something that had never been done before—notice pleading. The indictments are shorter, tighter, and cleaner, yet give the indictees the degree of notice required for them to understand the crimes they committed, where they committed them, and when. These indictments have withstood legal challenge, and we are currently prosecuting based on the charges within them. I firmly believe that this is the appropriate direction that the drafting of indictments needs to take.

V. LESSONS LEARNED

Realistic Mandate: The mandate of a tribunal has to be realistic. We were able to do our work efficiently and effectively because we had a workable mandate, which matched the expectations of the international community. “Greatest responsibility” was the key phrase within the mandate that permitted the tribunal in Sierra Leone to succeed.¹¹ The numbers of individuals that we now considered to

11. See *supra* notes 9-10 and surrounding text.

indict went from 30,000 to around 20.¹² We could get the job done in a politically acceptable time frame.

Proximate Location: Another lesson learned is that a tribunal is most effective when it is located in the region of the conflict. To the extent that this can be done, regional tribunals need to be located right where the crimes took place. It allows for the victims to see justice done and renews or restores a faith in the rule of the law. The downside to such placement is security, as recent events in Iraq illustrate.

Local Outreach: Outreach is essential to assist in the understanding of the importance of the rule of law and international justice. A tribunal can only complete its work if the citizens of the region appreciate and understand why it is the international community that is there seeking justice and accounting for the various international crimes allegedly committed. At the end of the day, it will be the people living in the area who will have to live with the results.

Delimited Timeframe: A tribunal also must be done with its work in five years or less. Tribunals all have one common thread, namely politics. Without the political support of the citizens, the various States, the region, or the international community in general, a tribunal will not completely succeed in appropriately seeking justice for the victims of the atrocities that have taken place. The longer the tribunal remains, the greater the chances that the vital support of the populace and their political leaders will begin to fade. This has already happened in Rwanda and to some extent in the Balkans.¹³

Auxiliary Truth Commission: A further lesson learned is that a truth commission is essential to building a sustainable peace. We

12. See The Secretary General, *Special Court for Sierra Leone Completion Strategy*, ¶¶ 1, 7-8, delivered to the Security Council and the General Assembly, U.N. Doc. A/59/816, S/2005/350 (May 26, 2005) (reporting that the Special Court has issued indictments for thirteen war criminals, two of whom have subsequently died, and two of whom remain at large).

13. Time may also preclude a sense of justice, as seen recently in the reaction to the death of Slobodan Milosevic. See, e.g., Roger Cohen, *To His Death in Jail, Milosevic Exalted Image of Serb Suffering*, N.Y. TIMES, Mar. 12, 2006, at A1 ("The trial of Mr. Milosevic, endlessly long and now forever inconclusive, seems to have done little to provide the sort of clear accounting that would have served a Balkan future by making history, and particularly Serbian responsibility, clear.").

were able to show that both a truth commission and a war crimes tribunal could work side by side in helping to restore peace to a country and to a region.¹⁴ In my mind, and I have stated this many times publicly, you must have both truth and justice to ensure that a sustainable peace develops. One without the other makes the peace somewhat illusory. Simply put, truth plus justice equals a sustainable peace.

Experienced Jurists: The true Achilles heel to any tribunal is the experience of the judges who are appointed to try the cases and hear the various appeals. The chambers need experienced criminal jurists. Experience has shown that the criteria for judges at the international level is questionable and needs to be reviewed.

Local Professionals: Hiring local nationals is also a key to success. We hired professionals from the region from the very start of our work and were very proud of the dedication and the bravery of our African colleagues. There was not one time when I doubted the abilities of our West African trial counsel and investigators. The experience and training they gained dovetailed quite nicely into our legacy program, where they will remain to continue the fight to return the rule of law to the region.

Incorporation of Local Culture: Consideration of regional cultures establishes confidence in the rule of law. The people have to understand that the justice we are seeking is the justice that will aid them in restoring their societies to a proper balance. Cultural perspectives must be respected and factored into the prosecutorial strategy and plan. This also assists the investigators and witness managers in preparing West African witnesses to testify before an international tribunal in a way that they understand.

VI. CHALLENGES AHEAD

With respect to the direction in which international criminal law should progress, I envision three considerations or challenges: (1)

14. See The Secretary General, *Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone*, at 10-11, delivered to the Security Council, U.N. Doc. S/2002/246 (Mar. 6, 2002) (explaining the relationship between the Truth and Reconciliation Commission and the Special Court, addressing their respective mandates, jurisdiction, and information-sharing, while identifying areas of cooperation and potential conflict).

indifference; (2) political resolve; and (3) mandate enforcement. Allow me briefly to explain each one.

Indifference: My biggest challenge was the indifference of the international community towards the work of the tribunal. This war crimes weary world, particularly as it related to Africa, simply feels incapable in dealing with the atrocities. The ruin of over one million lives still did not stir the hearts of the western world.¹⁵

Political Resolve: Additionally, a further challenge was sustaining the will to see a successful tribunal through to a just conclusion. Half way through the life of the Special Court, we simply ran out of donations and had to scramble to seek a subvention grant from the United Nations to see us through our third year. Currently, we are seeking donations for the fourth year.

Mandate Enforcement: A tribunal can only be successful if those properly indicted under statutory guidelines and the laws are turned over to it for a fair trial. This is certainly true in the case of the Special Court. Charles Taylor remains in political limbo in Calabar, Nigeria after I unsealed the seventeen-count indictment against him in June of 2003.¹⁶ At the time, it was the appropriate thing to do; get him out of Liberia so the peace process could move forward in Accra, Ghana.¹⁷ However, it has been over two years, and Nigeria no longer has any standing to keep him in violation of both their

15. Cf. Nicholas Kristof, *What's to Be Done About Darfur? Plenty*, N.Y. TIMES, Nov. 29, 2005, at A23 (arguing that the U.S. government acquiescence in Darfur is fueled by the same public indifference manifested during other such atrocities throughout modern history: "[t]here is no public outcry").

16. See Prosecutor v. Taylor, Case No. SCSL-2003-01-I, Indictment Against Charles Ghankay Taylor (Mar. 7, 2003) (indicting Charles Taylor on seventeen counts, including terrorizing the civilian population and collective punishments, unlawful killings, sexual violence, physical violence, use of child soldiers, abductions and forced labor, looting and burning, and attacks on UNAMSIL personnel).

17. See Press Release, Special Court for Sierra Leone Office of the Prosecutor, At Second Anniversary of the Unsealing of Taylor's Indictment Prosecutor Says "Charles Taylor Holds a Sword Over the Future of West Africa" (June 3, 2005) (explaining that Charles Taylor's removal from Liberia, through an exile agreement made with the Nigerian government, made sense in order to lessen his obstruction of the peace process).

domestic law and international law. There can be no African exception to the Nuremberg principles that we celebrate this year.¹⁸

VII. CRIMINAL WARFARE—A RELATIVELY NEW PHENOMENON

I have been in public service my entire adult life, many of those years in harms way. Yet, when I arrived in West Africa, I faced a new combatant, the international criminal element. That element formed a joint criminal enterprise in West Africa led by three sitting presidents, Muammar Qadhafi, Charles Taylor, and Blaise Compaore of Burkina Faso.¹⁹ Over a period of ten years, these individuals—one indicted, one named and shamed, and the other warned away—led gun runners, diamond dealers, Eastern European mafias, other international thugs, and terrorists, including Hezbollah and al Qaeda, in a whirlwind of death and destruction the likes of which the world has never seen. That it all occurred at the end of the twentieth century is a sad commentary of mankind.

The unrest throughout the West African region, particularly in Sierra Leone, the Ivory Coast, and Liberia, was started by criminals for their own personal and criminal gain. The civil war in Sierra Leone did not begin on account of the more traditional causes behind warfare, legitimate or otherwise, such as political, religious, cultural, ethnic, or social reasons. Rather, the impetus for the civil war was pure criminal avarice and greed. They did it because they could. Where there is no law, there is anarchy.

There are two aspects to West Africa, the West Africa you see and the West Africa that is. The West Africa that is was the realm in which these criminals operated for over thirty years—each of them

18. See U.N. GAOR, Int'l Law Comm'n, *Report of the International Law Commission on Its Second Session*, U.N. Doc. A/CN.4/34 (June 5-July 29, 1950) (summarizing the principles that guided the Nuremberg Tribunal and continue to lay the foundation for international criminal law, which includes holding responsible those who commit war crimes, even if they were acting as a Head of State).

19. Blaise Compaore, President of Burkina Faso, first took office in 1991 after an unopposed election; he was re-elected in 1998 for a second seven-year term. See U.S. State Dep't, Bureau of African Affairs, Background Note: Burkina Faso (Aug. 2005), <http://www.state.gov/r/pa/ei/bgn/2834.htm>.

drinking out of the public trough, resulting in widespread corruption, lack of hope, and massive international crimes.

CONCLUSION

International criminal justice can be effectively and efficiently delivered within a politically acceptable time frame. The international war crimes tribunal in West Africa, the Special Court for Sierra Leone, has shown that it can be done. Regional hybrid arrangements are effective in delivering justice directly to the victims, their families, districts, and towns; and they can work in the paradigm of the Rome Statute that established the International Criminal Court.²⁰ We now have the tools in place to face down impunity wherever it rears its ugly head. On the sixtieth anniversary of the Nuremberg Trials, we must continue to ensure that the rule of law is the guiding principle for good governance and a world at peace.

20. Rome Statute of the International Criminal Court, arts. 1, 5, July 17, 1998, U.N. Doc. A/CONF.183/9 (1998) (establishing the International Criminal Court in order to prosecute the "most serious crimes of concern to the international community," which include genocide, crimes against humanity, war crimes, and the crime of aggression).