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

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Thursday, 27 November 2008
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Abuse of Process: Defence Accused Prosecution of Providing Improper Incentive for Witnesses in the Taylor Trial

Joseph A.K Sesay

Introduction
The proceedings of the Charles Taylor trial currently taking place before trial Chamber II of the Special Court for Sierra Leone (SCSL), sitting in The Hague has been marred by frequent allegations of providing improper incentives for witnesses who testify for the Prosecution. If such allegations are true, it may weigh on the Prosecution’s case and may also undermine the public’s confidence and respect for the general legal process, in effect flouting the primary purpose for creating international tribunals. Allegations of improper witness incentives must therefore be subjected to close examination by judges of both Trial and Appeals Chambers in international tribunals. Taylor’s Defence counsel has alleged during cross-examination of prosecution witnesses that some of the prosecution’s witnesses only agreed to testify after being persuaded by the prosecution with either exorbitant amounts of money or other facilities. This piece seeks to evaluate the defence’s allegation by examining evidence elicited from prosecution witnesses during cross examination with regards to payment made by the Office of the prosecutor (OTP) during its investigations and gives analyses of such alleged impropriety.

General Practice
The general practice of the SCSL with regards to the identification and selection of witnesses is that investigators of both prosecution and defence are allowed to investigate and select potential witnesses. In the case of the prosecution, Rule 39(ii) of The Rules of Procedure and Evidence (The Rules) of the SCSL provides that the Prosecutor if so requires may take measures to provide assistance and support for potential witnesses. To this end, the OTP established a unit known as the Witness Management Unit (WMU) to assist with any support needed by investigators during their search for witnesses. Once a potential witness has been identified, responsibility for him/her is transferred to the Witness and Victims Support Unit (VWSU) – a branch created by the Registry to administer support to witnesses who wait to testify. Up until the stated transfer of responsibility, the WMU administers...
every arrangement regarding the safety and support of potential witnesses and their sources. They in turn produce a receipt of every payment or reimbursement made to every potential witness. The Defence in the trial of Charles Taylor has alleged during cross-examination that the WMU and OTP investigators have been making extra payments or reimbursements to potential witnesses during the course of their investigations.

Defence Strategy
The claim of impropriety by both prosecution and defence is not a new phenomenon. However, it is incumbent on both parties in the trial of Charles Taylor to acknowledge the need to set a high standard of justice, one of the primary objectives of the court. The Defence in the Charles Taylor case has sought to discredit the credibility of prosecution witnesses by questioning the relevance of certain payments made by the OTP and implying that such payments should be perceived as improper inducements. While these attempts to undermine prosecution witnesses, it also call into question the integrity of the proceedings as in the long run they may actually elevate the credibility of the trial by increasing its transparency.

One of the most senior personnel to testify in the Taylor trial was Moses Blah, former vice president to Taylor. He testified from 14th to 21st May 2008. During cross-examination, lead defence counsel Courtney Griffiths noted that Blah was given £ 450, which is approximately 27,000 Liberian dollars to collect some documents from his farm in the provinces. Blah stated that the documents were only personal notes which he had to refer to in answering questions from OTP investigators. While the Rule grants the prosecutor the power to use all means necessary to get and protect information from potential witnesses, such means must be reasonable in order to adhere to the standards of fair trials. Furthermore, Blah noted that he was given $5,000 by the OTP to settle his medical expenses related to a cardiac condition. While the payment of witness medical expenses may be reasonable under certain circumstances, it nevertheless raises fundamental questions about the fairness of a trial, and thus should only be done upon good course. In the case of Blah, he testified that he can take care of his medical bills and no mention was made as to why the Prosecution decided to pay for a bill that a potential witness can pay.

The Defence also asserted their allegation of improper witness inducements during the cross-examination of witness TF1-375. Co-defence counsel, Mr. Terry Munyard, noted that the witness was given money on different occasions as transport reimbursements for meeting with OTP investigators, even though the witness was staying in Monrovia, where the investigators resided at that time. Munyard further noted that the witness was given money on other occasions without attending any interview with the investigators. He further maintained that the prosecution considered some payments as "payment for lost wages," and noted that on some occasions, witnesses only spent small amount of time with investigators yet were still reimbursed for lost wages.

The Defence has also maintained that the OTP is engaged in providing inducement in the form of relocating their witnesses. While the Defence has not questioned the propriety of relocating Prosecution witnesses, they are demanding that this should be done by the WVSU rather than the Prosecution. For instance, the defence questions payments made by OTP to Moses Blah for "family support".

Prosecution's perspective
The Prosecution has vehemently denied providing any form of improper incentive for their witnesses; asserting rather that they are taking measures that they deem necessary to obtain information that will assist them in their investigation. The OTP has maintained that they reimburse potential witnesses for transportation and lost wages during interviews with OTP investigators. They also noted that in extreme circumstances, they can provide medical allowances to potential witnesses in a bid to protect their evidence. The Prosecution has maintained that they are obliged to reimburse their potential witnesses upon good course. They have noted that OTP investigators usually enquire about the earnings of their potential witnesses as most of their witnesses have maintained that they are the "bread winners" for their families. To this end the Prosecution is providing what it perceived as reasonable wages a potential witness stand to loose
during the course of their interviews.

Furthermore, the Prosecution has also maintained that some of their potential witnesses stand the risk of being intimidated once they have agreed to talk with them. The Prosecution has noted that security measures have to be put in place for such potential witnesses as their safety should be guaranteed. In minimizing the risk or fear of intimidation, the OTP can relocate such people should any threat of intimidation arise.

A Case Before the Special Court
On the 22nd June 2007, in Trial Chamber I of the SCSL, Justices Bankole Thompson, Pierre Boutet, and Benjamin Mutanga Itoe, unanimously ruled to exclude statements obtained by OTP investigators from the First accused Issa Hassan Sesay in the trial for alleged leaders of the former Revolutionary United Front (RUF). The Chamber found that the statements obtained from Sesay by OTP investigators were not voluntary, in that they were obtained by “fear of prejudice and hope of advantage held out in persons in authority”. The Chamber further ruled that the statements cannot be used for the “sole purpose of cross-examining the first accused” because they were not admissible under Rule 92, which provides that evidence that would bring the administration of justice into disrepute cannot be admitted. It appears that, the trial Chamber excluded the evidence because the accused only decided to grant interviews to OTP investigators in order to get something from them. Likewise, in the case of Charles Taylor, evidence from Prosecution witnesses should be obtained voluntarily without any hope of advantage. The Defence has constantly pursued this line of questioning during cross-examination, noting that high profile Prosecution witnesses agreed to testify for the Prosecution because of the fear of being indicted by the Special Court. While this is just a claim, the Trial Chamber should be mindful of the individual circumstances of some high profile witnesses. This does not suggests that high profile witnesses do not testify voluntarily but wherein such involuntary evidence as ruled by Trial Chamber I is admitted due to impropriety by investigators, it would contravene the Court’s sense of justice.

Conclusion
Both pre-trial and trial proceedings can be animated, but these should be done with minimal misconduct within the rules of the Court. The general provision of Rules of Procedure and Evidence as prescribed in Rule 89 states that the Chamber may admit any relevance evidence, while the Prosecution in the trial of the former president will argue based on this provision, sub rule (B) of same provides that the Chamber can determine admissibility and weight of evidence in relation to best practice. While reimbursing transportation and lost wages might not amount to incentive/or inducement, providing undue reimbursement might send a message to other potential witnesses that the OTP is a ground for profit making. Even if such witnesses may testify voluntarily, the fact that they are doing it with the hope of having their expenses reimbursed (legitimate or otherwise) will discredit the entire judicial process.
From front page

The Maritime Wing of the Sierra Leone Navy headed by Capt (N) Danie S. Mansaray, past Tuesday ordered the arrest of five Guinean pirates within the Sierra Leone territorial waters. Addressing a news con-
Continued page 3

Lt (N) Juana told journalists that on arrival there was commotion between the crews and the pirates as the Captain of Shanagai-3 had hit their pirated boat and it got split which he said ignited the fracas as fighting erupted between the two groups.

Sub Lt Caulker also told the press that they were fully armed to the teeth but that they refused to use their military might. According to him they decided to use some military tactics to get rid of them. He further disclosed that during the struggle to put them under control one pirate died as a result of exhaustion, while Foday Bangura and Lamin Sillah, who claimed to be Guinean Navy died by drowning during the attack.

The pirates, he said were arrested with AK 47, oozy gun and a pistol with rounds.

The criminal investigation Department (CID) is currently investigating the matter.

The five Guinean pirates arrested gave Sierra Leonean names like Suma, Morris Kamara, Abubakar Kamara, Mohamed Sampay and Frederick Palmer.
Report from The Hague

The first five people convicted by the Special Court for Sierra Leone in Freetown were given sentences ranging from 15 to 50 years. But is there a definite sentencing period for convicts who committed war crimes and crimes against humanity? If Mr. Charles Taylor is found guilty how many years could he spend in prison? Does the Special Court have enough money to end Charles Taylor’s trial? Mr. Herman Von Hebel is the Registrar of the Special Court for Sierra Leone. Mr. Von Hebel is based in Freetown, but he’s visiting The Hague this week. BBC World Service Trust Journalist, Joseph Cheeseman caught up with Mr. Von Hebel today in The Hague and first asked him if there was an Appeal Hearing from Charles Taylor’s trial, where would it be held?

VON HEBEL: The appeal hearings will definitely be held here in The Hague. Mr. Taylor is here in The Hague and he will remain, also during the appeal phase, he will remain here. Whether the Judges, when they deliberate and prepare a judgment, whether they will do so from out of Freetown of from out of The Hague, we still have to decide. But the appeal hearings and a delivery of an appeal judgement will definitely be done here in The Hague.

JOSEPH CHEESEMAN: Have you any idea the sentence that accompanies these war a crimes and crimes against humanity?

VON HEBEL: When we talk about war crimes and crimes against humanity, we’re talking about very serious crimes. But that doesn’t mean that it automatically always leads to severe punishment. The final punishment that needs to be meted out in relation to a particular person first of course depends – and that is a decision of course by the Judges, not by me – on the evidence being presented by the Prosecution, and how reliable the evidence is, and all that. In addition to that, it relates to the level of personal involvement of an accused in relation to the crimes that have been presented. You know, the [indistinct] presentation of evidence that women have been raped, that villages have been burned down, that people’s hands have been chopped off doesn’t mean that someone who is in the defence position is responsible for that. What needs to be proven – and that is the crux of this trial of course – is that there’s a link between the people who committed those crimes on the ground in relation to Mr. Taylor and from out of Liberia. That is the crux of this case, and that is for the Prosecutor to establish that link.

CHEESEMAN: There are no number of years on the book to say for war crimes and crimes against humanity 50 years, hundred years.

VON HEBEL: There’s nothing in the books that automatically applies in that respect, and we’ve seen it in other cases of course for the Special Court where so far the five people who have been convicted in final instance have seen sentences ranging from 15 to 50, so that there’s a wide range, and it always relates to the quality of the evidence and actual involvement of the particular accused person.

CHEESEMAN: What do you say about funding to the Special Court for Sierra Leone? Do you have enough money to end the trial?
VON HEBEL: At the moment we have enough money in our bank accounts in order to be able to carry us through until the beginning of March of next year. We have received over the last couple of months huge contributions in particular from the United States and from the Netherlands, and we recently received a substantial contribution also from Norway, and we know that other countries are working on contributions for the coming period as well. I will be going to New York over the next two weeks in order to further do activities for fundraising and meet with ambassadors of all kind of countries. It is a concern, but I’m relatively confident that we will [constantly] be able to have sufficient funds in order to have the proceedings go on uninterruptedly. This year, 2008, we have a record budget need of $36 million, which is a huge amount of money. Next year there’s already going down because of course in Freetown there’s a lot of activities have come to an end so we will need less money for next year. It remains an issue of constant attention in order to ensure that all the parties can continue with their work.

CHEESEMAN: At the moment, how much is the Defence team, or the Taylor team, receiving from the Court?

VON HEBEL: They get a lump sum of $70,000 per month...

CHEESEMAN: Seventy thousand...

VON HEBEL: $70,000 dollars, and that is for the entire Defence team, so for all the counsel and lead counsel and co-counsel...

CHEESEMAN: (Indistinct) Mr. Taylor?

VON HEBEL: Yes, Mr. Griffiths and Mr. Munyard and everyone else who is in the team, legal assistants as well. In addition to that, which is used for salaries, we do provide support to the Defence team in terms of office space here in The Hague office – computers, printers, paper for printing – everything else. We have office space for them in Freetown and also in Liberia. There are investigators working over there as well. So all in all, a rough estimate would be they have about $100,000 that Defence needs in order to do their work. We will soon get into the Defence case of course, because the Prosecutor’s about to finish. We will give some additional funds to the Defence...

CHEESEMAN: How much?

VON HEBEL: Roughly between $5,000 and $10,000 on a monthly basis in order to assist them during the Defence case. It is a crucial element in ensuring that Mr. Taylor receives a fair trial.

CHEESEMAN: You mentioned $70,000 a month for the Defence. How much is the Prosecution getting a month?

VON HEBEL: The Prosecution has a much bigger budget, but that also takes into account of course that the Prosecution has still investigators working not only on the Taylor trial, but used to work also on other trials. So the overall office requirements and funds required for the Prosecutor are much higher. I think we’re talking about $3 to 4 million this year in total. So it’s probably about two to three times more than the Defence, but they also need to be taken into account of course that the Prosecution has the burden of proof, and of course the Defence doesn’t have the burden of proof. So overall if we look at the financial support to the two of them, I think we are in a very balanced situation that we give them both the resources that they need in order to do their job in a proper way.
News Story

The Registrar of the Special Court for Sierra Leone says there is no definite number of years on the books for the prison term of convicts who committed war crimes and crimes against humanity.

Mr. Herman von Hebel told the BBC World Service Trust today the crimes are very serious.

He however said the severity of the crimes didn’t automatically mean they would be accompanied by severe punishment.

The Registrar of the Special Court said the sentence depends on the quality of the evidence presented by the prosecution.

Mr. von Hebel clarified that the mere presentation of evidence that women were raped, villages were burnt and people were amputated didn’t mean that the accused former Liberian president was involved.

The Special Court Registrar said what the prosecution needs to prove is the alleged link between those who committed the crimes in Sierra Leone and Mr. Taylor.

At the same Mr. von Hebel told the BBC World Service Trust that The Special Court has enough money to end the trial of Charles Taylor.

He said for 2008 the court received 36 million United States Dollars from donor assistance. The Registrar said the court would need a smaller amount for next year because most of the works in Freetown have been completed.

Mr. von Hebel revealed that the prosecution got three to four million dollars this year.

In an interview, he told the BBC, Charles Taylor’s Defence team gets 100-thousands United States Dollar per month for salary, Mr. Taylor’s well being and office maintenance in Freetown, Monrovia and The Hague.

He clarified that the prosecution gets more money because it has the burden of proof.

Meanwhile the Special Court for Sierra Leone will not conduct hearing into Charles Taylor’s trial on tomorrow and Friday.

The Presiding Judge of the Court, Teresa Doherty, said the Judges would meet in plenary for the two days. The trial is expected to resume on next Monday.
Afternoon Session: Defence Counsel Concludes Cross-Examination of Witness in Closed Session; Prosecution Counsel Conducts Re-Examination of Witness in Open Session

3:00PM: Defence counsel Courtenay Griffiths concluded the cross-examination of Witness TF1-579 entirely in private/closed session. When court resumed in open session, prosecution counsel Nicholas Koumjian concluded re-examination of the witness. The witness concluded his testimony.

Re-Examination of Witness

Prosecution counsel Nicholas Koumjian led the witness through re-examination. During this process, counsel sought to clarify a few things about which the witness was asked during cross-examination. Counsel asked the witness about the death of Sam Bockarie. The witness had earlier on testified that when Bockarie was killed, he went into hiding. He said that Benjamin Yeaten later asked him what he would have done if he was ordered to kill Bockarie. He said he responded that he would have obeyed the order. He said Yeaten then ordered him to arrest Bockarie’s Sierra Leonean bodyguards and acting on that order, he was able to arrest two of the said bodyguards.

Counsel asked the witness about the photograph shown to him during cross-examination which showed a diamond formation of closed protection for Mr. Taylor. In the photo, the witness identified several individuals including Yeatan. Counsel asked the witness to say what Yeatan’s height was and the witness responded that he had the same height with Yeaten. He also said that another bodyguard, Musa Njai, a Gambian was a little taller than him but shorter than prosecution counsel Koumjian. Judge Doherty asked Mr. Koumjian what his height is and he said that last time he checked, he was just about 6 feet one inch tall.

Counsel also asked the witness about the photo shown to him in which he identified men in uniform. The witness said that the SSS originally used black uniforms when Taylor first became president but the said uniform was later given to the police while the SSS wore a navy blue uniform.

Counsel asked the witness about Jungle. He said that Jungle was the chief liaison between the RUF and Taylor’s government. He said that Jungle took orders from Taylor and Yeaten.

The witness went through a list of names of people he said were executed on orders from Taylor. Some of the names mentioned were Isaac Baye, Alloscious Mending, Cascious Jacobs, Joe F. Doe, Jackson Doe, Ojuku Larry, Samuel Doki, etc. On the death of Oliver Vanny, the witness said he saw his corpse after his execution. He said he cannot say why Vanny’s body was not buried after his execution.

Counsel asked the witness to explain what he meant when he said in his earlier testimony that the RUF and the government were one. The witness said he meant the RUF and Taylor’s government were the same because RUF commanders had free passage to Monrovia and NPFL fighters had same access to RUF territories. He said that ammunition was transported from Monrovia to Sierra Leone for the RUF.

That was the end of re-examination.

Judges’ Questions
Judge Lussick asked the witness about his visit to Mr. Gray in the defence office. This was an issue that the witness had testified about during private/closed session. The witness said he went there because Mr. Gray sent that he wanted to see him. Justice Lussick asked him why he went there when he had already indicated that he did not intend to testify for the defence. The witness said he went there to hear what Mr. Gray had to say and that he reiterated his position to him that he did not wish to testify for the defence. He said that the last time Gray called to see him, he refused to go.

That brought the witness’s evidence to conclusion.

Court adjourned for the day.
Newspaper Summary

Liberty Party Releases Policy Document for Liberia
- The opposition Liberty Party says it has released the first part of its policy brief to serve as a
guide to economic restoration.
- The document is titled, “The Global Financial Crisis: Policy Implications for Liberia”.
- In a release, the party said the brief is a statement which provides in-depth analysis into the
current financial crisis and outlines policy choices for government.

L$2M Marijuana Seized in Ganta, Nimba County
(Daily Observer)
- Agents of Drug Enforcement Agency (DEA) operating in Ganta, Nimba County, have arrested
a huge consignment of marijuana loaded in a truck heading for Monrovia from Saclepea.
- The value of the drugs is put at nearly two million Liberian dollars.
- The marijuana is the largest consignment arrested in the county since the DEA began a
recent crackdown on trafficking in that part of the country.
- It can be recalled that four months ago, a joint operation headed by the Drug Enforcement
Agency destroyed seven large marijuana farms in the county.

Kolleh Town Murder Case Resumes Thursday
- Defense and prosecution lawyers on Tuesday completed the selection of jurors in the murder
case involving detained Margibi Senator Roland Kaine and 15 others.
- Senator Kaine and the 15 others were indicted in connection with the June 7, Kolleh Town
massacre.
- At least 16 men were murdered during a farmland dispute and several others are still
missing.
- Senator Kaine has persistently denied any involvement.
- The trial is slated to resume on tomorrow, Thursday.
- Meanwhile, the presiding Judge of the Criminal Court “B”, Yussef Kaba yesterday warned both
defense and state prosecutors of “unethical” behavior in handling the murder case.

More Casualties in Nimba Land Dispute
(The News)
- It has been confirmed that seven persons were wounded in last week’s land dispute between
Zuaplay and Doumpa in Nimba County.
- Tappita District Representative Edwin Gaye said among those wounded were two persons
shot with single barrel guns.
- In an interview, Representative Gaye said two gunshot victims were admitted at the Ganta
and Sanniquellie hospitals while the others were taken to the MSF hospital in Saclepea and
were later discharged.
- He condemned the violence and called for an immediate probe.
- Calm has meanwhile returned to the area following the deployment of police officers.

President Sirleaf Launches 16-Day Gender Awareness Campaign
(The Inquirer, National Chronicle, Daily Observer)
• President Ellen Johnson Sirleaf yesterday launched the 16-day activism against gender violence in the country.
• In a keynote address, the former Interim President of the Liberia Marketing Association, Madam Comfort Bedell Marshall, said prejudices against women continue to prevail, despite efforts by Government to address the imbalances.
• Also speaking, the U.N. Secretary General Special Representative to Liberia, Ellen Margrethe Løj, noted that the fight against gender violence cannot be won by government alone saying the UN fully backs the Liberian Government’s efforts to eradicate violence against women in the country.

Radio Summary
Local Media-Radio VERITAS (News monitored today at 1:30 pm)
Kolleh Town Murder Case Resumes Thursday
(Also reported on Star Radio, Truth F.M. ELBC and Sky F.M.)

Justice Minister Fails to Meet With Management of Catholic-Run Radio Station
• [SIC:] Justice Minister Counsellor Philip Banks yesterday failed to meet with the management of the Catholic-run Radio Veritas.
• The station’s management was summoned yesterday to provide evidence and sources relating to a story about the disappearance of US$100,000 at the Executive Mansion.
• The station said after some delays aides informed them that they would instead be meeting with Information Minister, Laurence Bropleh.
• No date was set for the meeting.

STAR RADIO (Culled from website today at 8:45 am)
More Casualties in Nimba Land Dispute

Liberty Party Releases Policy Document for Liberia

President Sirleaf Wants Anti-Violence Lessons in Liberian schools
• Speaking yesterday when she launched the 16-day activism against gender violence, President Ellen Johnson Sirleaf mandated the Education Ministry to include lessons of “Violence against Women” in the curriculum of schools.
• President Sirleaf believes the action would create the awareness at an early stage and help in the fight to eradicate violence against women in Liberia.
• The global theme is: “Human Rights for Women is Human Rights for All”.
• The activism is an international campaign to help raise awareness on gender violence and its effects on women.

Truth F.M. (News monitored today at 10:00 am)
University-Based Student Group Welcomes Audit of Government
• The University of Liberia Student Union (ULSU) has welcomed the audit reports of Government Ministries and Agencies.
• The students said the drive to ensure that such reports are accepted by the public marks the beginning of a true democracy and the fight against malpractices and corruption in the country.

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National courts must fight impunity, ICTR says

SUKHDEV CHHATBAR in Arusha

The Prosecutor of International Criminal Tribunal for Rwanda (ICTR), Justice Hassan Jallow, has underscored importance of national jurisdictions to try genocide suspects and to combat the culture of impunity.

Opening the three-day forum of national and international prosecutors, policy makers and civil society members yesterday, Justice Jallow said that national systems have to play critical role if progress was to be made in fighting impunity, reports Hirondelle Agency.

“The development from legal primacy to the principle of complimentarity as well as the strategy for transfer of cases from the (international) tribunals to the national courts are all a recognition of the dire need for a very close and effective partnership between national legal systems and international institutions,” he told over 80 delegates.

He added:” We must work together (national institutions and international tribunals) to ensure that there are no gaps in our struggle to end impunity for crimes; that no safe heavens exist for the suspects of international crimes; that any work left over from the mandate of the tribunal is effectively undertaken by national systems.

The ICTR Prosecutor, who is the host of the Forum, said experience and the records of the ad hoc international tribunals and the pool of talent are at the disposal of national institutions. Giving an example, Justice Jallow cited the UN Tribunal for Rwanda , which he said, had a real prospect that some of those persons indicted may not be tried within the remaining time frames and that such persons may have to be transferred to national jurisdictions for trial.

However, as the prosecutor was stressing for the transfers, the ICTR Chambers in recent months have already turned down such transfers of four genocide accused persons held in Arusha to Rwanda on grounds that they may not get a fair trial. The UN ad hoc tribunals for Rwanda (ICTR) and its sister court in The Hague (ICTY) are expected to wrap its first instance trials by at least before end of next year.

The President of ICTR, Sir Dennis Byron, observed that the jurisprudence of the international tribunals was still too little taken into consideration. “The jurisprudence should provide guidance as a point of reference in national jurisprudence and legislation and in the daily work of prosecutors dealing with international crimes.”

According to Justice Byron, the Tribunal’s work has already and continues to have an impact on national compliance with international obligations in the human rights sphere, referring in particular to the abolition of the death penalty and further judicial reforms in Rwanda to enable the future referral of cases to Rwandan courts.

“These reforms will impact also on national decisions concerning the possible extradition of suspects to Rwanda,” he stated. Addressing the same gathering, ICTR Registrar Adama Dieng said: “We live in a century where it is not possible to turn a blind eye on horrendous crimes like genocide or crimes against humanity, irrespective of their venue” adding that it was an international duty of every leader, every
prosecutor, every human rights activist to identify the legal contours of each international crime and assist in its effective prosecution.

The Prosecutor of Special Court for Sierra Leone (SCSL), Stephen Rapp, said that with new international justice order, there was no safe shelter for any genocidaire or a person who has committed human rights violations. “Who knew that one day Charles Taylor (ex-president of Liberia), Slobovan Milosevic (ex-Serbian President) or Jean Kambanda (ex-PM of Rwanda during 1994 genocide) and other top ministers will face justice before international courts…but haven't they faced it ?.” Mr Rapp, a former Chief of Prosecutions at the ICTR, said that ad hoc tribunals have given affirmative definitions to genocide and other humanitarian crimes of international level which were hitherto never there. The Forum is planned to wind up on Friday.
Is the UN leading the Lebanese on?

By Michael Young

According to press reports, United Nations Secretary General Ban Ki-moon will set March as the deadline for work to begin at the Hariri tribunal. The latest extension will be referred to as "technical" by the Security Council, an insincere notion concealing the fact that in the past three years, from one extension to the next, the UN investigation has moved forward with remarkable, even suspicious, lethargy.

It's long past the time to begin wondering what really happened in the two years when Serge Brammertz was UN commissioner. What investigation file did he leave in the hands of his successor, Daniel Bellemare, who, if that is at all possible, has been even more silent than the mute Belgian? It's a matter of record that Brammertz wasted valuable time by reopening the Hariri crime scene and repeating the work of the first commissioner, Detlev Mehlis, and others, only to reconfirm their findings. It's also virtually a matter of record that Brammertz shied away from using the authority granted by the Security Council to its fullest in his interrogations in Syria - most prominently in his interview of the Syrian president, Bashar Assad. That's why this latest extension, technical or not, leads us to believe that Bellemare was left with so incomplete a dossier, that by March he will have needed more than a year to fill in the blanks.

On top of that comes disturbing information that the investigation has stalled. The information may be correct or it may not be, but for such doubts to dissipate, both Bellemare and the UN will have to tell us more than they have until now. If the Canadian commissioner soon offers up an update report as devoid of content as the last one, indeed as insulting as the last one, then it's the UN's credibility that will be at stake. Bellemare has already indicated he will not name names. Fine; but if the Security Council is taking the trouble to use the term "technical extension," that means that come January we will be entering into a new phase of the investigation. A new phase requires a more substantial UN update.

What should the next report contain? First of all a reassurance that Bellemare actually has something in his briefcase to make a persuasive case in court. The commissioner has been more open in private with officials than he has been in public, and that poses problems. The implementation of justice, if that is where we are headed, is not a private matter to be discussed between UN and Lebanese officials and foreign ambassadors; the Hariri murder was a national affair, and not since Detlev Mehlis has a commissioner actually considered that relevant.

Bellemare must also take a clearer position on several issues left hanging thanks to his and to Brammertz's wishy-washiness. Now that we will soon be entering a pre-trial phase, Bellemare must bolster the Lebanese judiciary when it comes to the detention of the four generals, not just throw the burden onto Lebanese shoulders. More is also needed indicating that Bellemare knows who ordered the Hariri assassination and those taking place afterward. Both Mehlis and the first official tasked by the UN to throw light on to the crime, Peter Fitzgerald, were much more affirmative on this issue, so why has Bellemare opted for the bewildering opaqueness of Brammertz? He needs to explain how the public interest is served by such an attitude, particularly when a public trial looms.

If Bellemare's files are not airtight by March, what happens? What kind of charge can he put together, bearing in mind that the Syrians have a highly competent legal team waiting in the wings to do battle? Some pessimistic legal minds point out that any court can be established, but that it need not necessarily implement its mandate - notably the special tribunal for Sierra Leone, which today lies dormant. That seems less likely with the Hariri tribunal, given the potential backlash in Lebanon, but a vital question is who Bellemare decides to accuse given what he has in hand. If he has hard evidence against some
suspects, but not others, might that force him to reduce the scope of the accusation the court will then submit? Or might the court decide that there is simply not enough material to go on, before sending Bellemare back to work to strengthen his case?

Then there are the politics. There is no center of gravity anymore at the Security Council to inject new life into efforts to unmask Hariri's killers. In 2005 and 2006, the French president, Jacques Chirac, and the American president, George W. Bush, provided that center of gravity. China, Russia, and the United Kingdom were in no position to oppose muscular resolutions bolstering the UN investigation. Today, we have Nicolas Sarkozy in Paris, and soon Barack Obama in Washington, neither deeply committed to the Hariri tribunal. Indeed, Sarkozy has invested too much into his relationship with Syria to allow the tribunal to disrupt that. The same holds for Russia, which was never enthusiastic about the tribunal in the first place, while the UK is now publicly vaunting its intelligence cooperation with Damascus. As for China, it is indifferent.

International bodies are only as effective as the actors backing them up. Under the best of scenarios, the five permanent members of the Security Council will simply leave the Hariri tribunal alone, to advance or hang depending on its evidence. But even that can lead to its atrophying. During the Brammertz years, the wide latitude afforded the commissioner, much like his lack of accountability for the slow pace of work, arguably deadened the investigation process. As the tribunal picks up speed, limited interest from the permanent five, not to say the active hostility of some of them, may actually render the body ineffective.

To avoid that outcome, Bellemare will have to prepare a compelling case. It makes no sense yet to doubt the commissioner's intentions. But we must be realistic: Bellemare, like his predecessors, isn't operating in a vacuum. If he has evidence that some powerful states do not want released; if there are fears that such evidence might generate instability or worse in Lebanon, then we might have to start preparing ourselves for an unsatisfying, even a failed, trial ahead. Then again this reading may be too dark. However, at this late hour we're entitled to insist that Ban Ki-moon and Daniel Bellemare at last prove it wrong.

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