

International Criminal Law

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I. Introduction

This article reviews some of the major developments during the year 2004 in the field of International Criminal Law. International Criminal Law (ICL) encompasses three broad areas. The first includes criminal prosecutions of individuals before international courts, including the International Criminal Court, the International Criminal Tribunals for Rwanda and the Former Yugoslavia, and criminal tribunals such as those in Sierra Leone, Kosovo, East Timor, and Cambodia.¹ These prosecutions are for the most serious of crimes, including genocide, war crimes, and crimes against humanity. The second area includes the exercise of universal jurisdiction by national courts to prosecute serious violations of international criminal law. The third area includes transnational applications of national criminal law and other matters such as international cooperation in criminal investigations, extradition, and prosecution.

This article cannot survey all of the developments in these three areas. As with other articles in this issue, the exclusion of a particular topic from discussion here should not be interpreted as a diminishment of the importance of that topic, but rather, as a necessary concession to space limitations placed on all articles in this issue, and a recognition that international criminal law touches upon the jurisdiction and interest of other committees within the American Bar Association's Section of International Law.

II. The International Criminal Court

The Rome Statute establishing the International Criminal Court (ICC) was adopted in 1998 and entered into force on July 1, 2002. The ICC is the world's first treaty-based international criminal court to try the most serious crimes of genocide, war crimes, and

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1. See generally CESARE P.R. ROMANO, ANDRÉ NOLLKAEMPER, & JANN K. KLEFFNER, INTERNATIONALIZED CRIMINAL COURTS: SIERRA LEONE, EAST TIMOR, KOSOVO, AND CAMBODIA (Oxford University Press 2004).

crimes against humanity.² At the end of 2004, ninety-seven nations were parties to the Rome Statute establishing the court. Additionally, by the end of 2004 twenty countries had ratified the Agreement on Privileges and Immunities of the International Criminal Court that entered into force on July 22, 2004.³

The ICC is not an organ of the United Nations but a separate, treaty-based organization. On October 4, 2004, the President of the ICC concluded the Negotiated Relationship Agreement between the International Criminal Court and the United Nations.⁴ The Agreement governs relations between the ICC and the United Nations, addressing such matters as permitting U.N. officials to testify before the court.

The most important developments in the ICC are not these agreements, but, rather, the initiation of investigations. In 2004, pursuant to the Rome Statute and the Rules of Procedure and Evidence, the ICC Chief Prosecutor, Luis Moreno-Ocampo, decided to open investigations of two situations in Africa. On June 23, he opened the ICC's first investigation in the Democratic Republic of the Congo, where thousands of people have reportedly been killed by summary execution and mass murder.⁵ On July 29, 2004, the ICC Chief Prosecutor also opened an investigation in the Republic of Uganda.⁶ Further information about both investigations is available on the court's website.⁷

III. The International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established by the U.N. Security Council in 1993 as a peacekeeping measure under Chapter VII of the U.N. Charter.⁸ The ICTY has had jurisdiction over crimes committed in the territories of the former Yugoslavia since 1991. There is pressure on the ICTY (and its sister institution, the International Criminal Tribunal for Rwanda) to conclude its work by 2008,⁹ even

2. Further general information about the court is available from the court's website at <http://www.icc-cpi.int/> (last visited May 27, 2005). In 2004 the ICC began to publish general newsletters about its work. While only two issues were published in 2004, the ICC began publishing them again in February 2005.

3. Austria, Canada, Croatia, Estonia, Germany, Iceland, Latvia, Lithuania, Mali, Namibia, New Zealand, Norway, Panama, Serbia and Montenegro, Slovakia, Slovenia, and Trinidad and Tobago have ratified the Agreement. Finland is party to the Agreement through acceptance, France through approval, and Liechtenstein through accession. Sweden ratified the agreement on January 13, 2005. In total, sixty-two States have signed the Agreement. See Coalition for the International Criminal Court, *Signatures and Ratification of the Agreement on the Privileges and Immunities of the ICC (APIC), by Region*, at www.iccnw.org/countryinfo/SIGNsRATIFsAPICbyRegion.pdf (last updated Mar. 28, 2005).

4. *Negotiated Draft Relationship Agreement Between the United Nations and the International Criminal Court*, U.N. GAOR, 58th Sess., Agenda Item 154, at Annex, U.N. Doc. A/58/874 (2004), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/465/66/pdf/N0446566.pdf?OpenElement>; G.A. Res. 59/43, U.N. GAOR, 59th Sess., Agenda Item 146, at para. 5, U.N. Doc. A/Res./59/43 (2004), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/478/84/pdf/N0447884.pdf?OpenElement>.

5. See Press Release, International Criminal Court, The Office of the Prosecutor of the International Criminal Court Opens its First Investigation (June 23, 2004), at <http://www.icc-cpi.int/press/pressreleases/26.html>.

6. See Press Release, International Criminal Court, Prosecutor of the International Criminal Court opens an investigation into Northern Uganda (July 29, 2004), at <http://www.icc-cpi.int/press/pressreleases/33.html>.

7. International Criminal Court, at <http://www.icc-cpi.int> (last visited May 27, 2005).

8. S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., at 2, U.N. Doc. S/RES/827 (1993) (providing for the creation or establishment of the Tribunal), available at <http://daccess.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf?OpenElement>.

9. *War Crimes Tribunal Promotes Plea Deals*, CHI. TRIB., Nov. 18, 2002, § 1, at 6.

though some trials are just now beginning,¹⁰ and some indicted individuals continue to elude arrest.

A. SLOBODAN MILOSEVIC

The trial of former Yugoslav President Slobodan Milosevic continued throughout 2004. When the trial began in February of 2002, Milosevic became the first head of state to face trial before an international criminal tribunal.¹¹ His trial has moved slowly, partly because Milosevic has been conducting his own defense and partly due to his health problems.

After two years of presenting nearly 300 witnesses and thousands of pages of documentary evidence to support a conviction against Milosevic for alleged war crimes, the prosecution rested its case on February 25, 2004. Just prior to that, presiding Chief Judge Richard May announced that he would be stepping down from the bench for health reasons.¹² In the following month, Serbian lawmakers decided to pay for the legal fees of certain Serbian war crime suspects, including Milosevic.¹³

After Milosevic began his defense in August of 2004,¹⁴ the Trial Chamber attempted to assign defense counsel because Milosevic's health problems were unduly delaying the trial.¹⁵ The Trial Chamber appointed two British attorneys, Steven Kay and Gilligan Higgins, to conduct Milosevic's defense.¹⁶ According to the rules of ICTY, a defendant may represent himself, but the court may take away this right and appoint defense counsel "where the interests of justice so require."¹⁷ The Trial Chamber's decision was subsequently reversed by the Appellate Chamber, after Milosevic and many of his defense witnesses refused to cooperate with the assigned defense counsel, who asked to be removed from the case.¹⁸ Milosevic is again conducting his own defense. The situation, while possibly unique to the Milosevic trial, presents issues that other tribunals will likely face in the future when defendants attempt to use their trials as political soapboxes.¹⁹ The Milosevic trial has continued into 2005.

10. Nicholas Wood, *A Bosnian Serb Leader Faces War-Crimes Court*, N.Y. TIMES, Oct. 13, 2004, at A6.

11. For background on the trial, see MICHAEL P. SCHARF & WILLIAM A. SCHARAS, *SLOBODAN MILOSEVIC ON TRIAL: A COMPANION* (Continuum Int'l Publg. Group 2002).

12. Tom Hundley, *Citing Health, Milosevic Judge Will Step Down*, CHI. TRIB., Feb. 23, 2004, § 1, at 5.

13. *Serbia Votes to Pay Milosevic During His War Crimes Trial*, N.Y. TIMES, Mar. 31, 2004, at A6.

14. See, e.g., Anthony Deutsch, *Milosevic Starts Defense With a Volley of Blame*, CHI. TRIB., Sept. 1, 2004, § 1, at 8; Marlise Simons, *Milosevic Opens His Defense Case by Going on the Offensive*, N.Y. TIMES, Sept. 1, 2004, at A7.

15. See, e.g., Marlise Simons, *Milosevic's Defense Delayed 6 Weeks*, N.Y. TIMES, July 17, 2004, at A6; Marlise Simons, *Court Looks for Ways to Speed Milosevic Trial*, N.Y. TIMES, July 28, 2004, at A9.

16. Anthony Deutsch, *Milosevic Snubs Defense Lawyers*, CHI. TRIB., Sept. 8, 2004, § 1, at 4.

17. Marlise Simons, *Milosevic Loses Director Role In His Own Courtroom Drama*, N.Y. TIMES, Sept. 8, 2004, at A3.

18. Marlise Simons, *Milosevic's Lawyers, Frustrated by Client, Ask to Be Taken Off Case*, N.Y. TIMES, Oct. 28, 2004, at A7; see also Press Release, International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber Renders Decision on the Assignment of Defense Counsel in the Milosevic Trial (Nov. 1, 2004), at <http://www.un.org/icty/pressreal/2004/p906-e.htm>; see also *Milosevic v. Prosecutor*, Appeals Chamber, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel (Nov. 1, 2004), at <http://www.un.org/icty/milosevic/appeal/decision-e/041101.htm>.

19. See generally Marlise Simons, *Lessons From a 'Textbook' War Crimes Trial*, N.Y. TIMES, Sept. 19, 2004, § 1, at 12.

B. OTHER ICTY DEVELOPMENTS

Other ICTY war crime suspects were sentenced in 2004, or had their sentences reviewed by the ICTY Appellate Chamber.

In March 2004, the Trial Tribunal sentenced Miroslav Deronjic to ten years in prison for his confessed crimes occurring in the former Yugoslavia.²⁰ Deronjic, the President of the Bratunac Crisis Staff in May 1992, was initially charged in 2002 on the basis of crimes against humanity and violations of laws or customs. In court, Deronjic admitted to ordering an attack on a small Muslim village.²¹ In carrying out his order, local police and soldiers of the Yugoslav Army burned the village, killed about sixty-four people, and deported the remaining villagers to Muslim-held territory.²² Although Deronjic confessed to the war crimes, he was given what appears to be an extremely "light" sentence.²³ Deronjic was able to take advantage of the newly implemented plea-bargain strategy employed by the tribunal. Thus, in exchange for a guilty-plea and evidence to be used in other trials, he was sentenced to only ten years.²⁴

One landmark Appellate Chamber decision in April 2004 affirmed the genocide conviction of Radislav Krstic, a Bosnian Serb general.²⁵ The Appellate Chamber stated that the 1995 massacre of more than 7,000 Muslims in Srebrenica was a crime that should be called "by its proper name: genocide."²⁶ These killings are viewed as the worst atrocity committed in Europe since World War II.²⁷ The bloodshed was "part of a final push by Bosnia's Serb leadership to create an 'ethnically pure' Serbian state."²⁸ The Appellate Chamber affirmed Krstic's conviction, but reduced his sentence from forty-six to thirty-five years.

Following the Appellate Chamber's ruling, Serbian officials finally acknowledged their responsibility for the 1995 massacre in Srebrenica that the Appeals Chamber classified as genocide. A report detailed the involvement of police and members of the Yugoslav Army, and identified the locations of many mass graves.²⁹ The public and official acknowledgment of responsibility for the crimes committed was an unprecedented official admission of the government's role in committing the international crimes alleged.

IV. The International Criminal Tribunal for Rwanda

The other international tribunal established by the U.N. Security Council under Chapter VII of the U.N. Charter is the International Criminal Tribunal for Rwanda (ICTR).³⁰

20. Press Release, International Claims Tribunal for the Former Yugoslavia, Judgment in the Case of the Prosecutor v. Miroslav Deronjic (Mar. 30, 2004), at <http://www.un.org/icty/pressreal/2004/p834-e.htm>.

21. Marlise Simons, *10-Year Term For a Serb In War Crimes Called Light*, N.Y. TIMES, Mar. 31, 2004, at A6.

22. *Id.*

23. *Id.*

24. *Id.*

25. Marlise Simons, *The Hague: Court Affirms Genocide in Bosnia*, N.Y. TIMES, Apr. 20, 2004, at A6; see also Press Release, International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber Judgment in the Case/The Prosecutor v. Radislav Krstic (Apr. 19, 2004), at <http://www.un.org/icty/pressreal/2004/p839-e.htm>.

26. *Id.*

27. Nicholas Wood, *Serb Leaders Acknowledge '95 Massacre in Srebrenica*, CHI. TRIB., June 12, 2004, § 1, at 5.

28. *Id.*

29. *Id.*

30. General information about the court is available at <http://www.ictcr.org/> (last visited May 27, 2005).

The President of the ICTR, Judge Erik Mose, reported to the U.N. Security Council in November 2004 that the ICTR was on schedule to complete all trials by 2008.³¹

In December of 2004, the ICTR Appellate Chamber affirmed the genocide convictions and sentences of a senior pastor of the Seventh Day Adventist Church in Mugonero, Elizabeth Ntakirutimana, and his son Dr. Gérard Ntakirutimana, a medical practitioner.³² In 2003, they were sentenced to ten and twenty-five years in prison, respectively. The pastor had previously fought (all the way to the U.S. Supreme Court) his extradition from the United States to the international tribunal.³³

V. The Khmer Rouge Trials

Twenty-five years have passed since the atrocities committed by the Communist Party of Kampuchea, also known as the Khmer Rouge, were brought to an end. Many of the leaders during the period of Democratic Kampuchea still live freely among the people of Cambodia, never having been prosecuted for their crimes. In 2004, the United Nations and the Royal Government of Cambodia finally agreed on a court to try those accused of killing an estimated 1.7 million Cambodians, over one quarter of their population.³⁴ In 2004, Cambodia approved an agreement with the U.N., with whom it had been negotiating with for over seven years, to prosecute the leaders of the Khmer Rouge. On October 27, 2004, Cambodia's Head of State, Chea Sim, promulgated a law in accordance with an agreement to establish a U.N.-assisted Extraordinary Chamber to try former Khmer Rouge leaders.³⁵ The agreement between Cambodia and the U.N. ended more than seven years of contentious negotiations.

The U.N. initiated an investigation of Khmer Rouge violations of Cambodian and international law in April of 1997. Shortly thereafter, the First Prime Minister of Cambodia, Prince Norodom, and the Second Prime Minister, Hun Sen, sent a letter to U.N. Secretary General Kofi Annan requesting "assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979."³⁶

In response to the letter, the U.N. General Assembly issued Resolution 52/135, in which the U.N. requested Kofi Annan examine the Cambodian request and possibly establish a group of experts to investigate bringing Khmer Rouge members to justice.³⁷ Kofi Annan

31. President & Prosecutor Update Security Council on Completion Strategy, ICTR NEWSLETTER, Nov. 2004, at 18, available at <http://www.ictor.org/ENGLISH/newsletter/nov04November2004.pdf>.

32. Appeals Chamber Judgment, Prosecutor v. Ntakirutimana, ICTR-96-10-A & ICTR-96-17-A, available at <http://www.ictor.org/ENGLISH/cases/NtakirutimanaE/Judgment/Arret/Index.htm>.

33. *Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999), cert. denied, 528 U.S. 1135 (2000).

34. *Identical Letters Dated 15 March 1999 From the Secretary-General to the President of the General Assembly and the President of the Security Council*, 52/135, U.N. GAOR, 53d Sess., Annex, Agenda Item 110(b), at 35, U.N. Doc. A/53/850 (1999), available at <http://www1.umn.edu/humanrts/cambodia-1999.html> [hereinafter Group of Experts Report].

35. *Amended Khmer Rouge Tribunal Law Promulgated*, JAPAN ECON. NEWSWIRE, Nov. 5, 2004, available at 2004 WL 64867594.

36. *Id.*; see also *Letter from Norodom Ranariddh, Cambodian First Prime Minister, and Hun Sen, Cambodian Second Prime Minister, to Secretary-General Annan*, U.N. GAOR, 51st Sess., Annex 1, Agenda Item 110, U.N. Doc. A/51/930 (June 21, 1997).

37. G.A. Res. 52/135, U.N. GAOR, 52nd Sess., 70th Mtg., Agenda Item 112(b), at 16, U.N. Doc. A/RES/52/135 (1997).

appointed three experts to examine the situation in Cambodia.³⁸ The Group of Experts traveled throughout Cambodia and evaluated existing evidence of the atrocities committed by the Khmer Rouge.³⁹ After considering several different means to prosecute the Khmer Rouge, the Group of Experts recommended that the U.N. establish an ad hoc international tribunal in a state in the Asia-Pacific region other than Cambodia.⁴⁰ In addition to the type of court, the Group also recommended that the U.N. appoint the judges and that the prosecutors for the International Criminal Tribunal of Yugoslavia and the International Criminal Tribunal of Rwanda serve as the prosecutors for the new tribunal.

On August 10, 2001, in what was essentially a rejection of the Group of Expert's proposal,⁴¹ Cambodia adopted the Law on Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (Law on the Establishment of the Extraordinary Chambers.)⁴² Unlike the U.N. proposal, the court established by the Cambodian Government would be held in Cambodia with Cambodian and international judges and prosecutors.⁴³ The U.N. refused to participate under the terms of the Law on the Establishment of the Extraordinary Chambers and subsequently pulled out of negotiations.⁴⁴ The U.N. believed that this type of trial would not guarantee the independence, impartiality, and objectivity that an international court must have.⁴⁵ Based on the current judicial system in Cambodia, the U.N. feared that a court with a majority of Cambodian judges could be heavily influenced and interfered with by the Cambodian Government.⁴⁶

Even though the official negotiations had ceased, the U.N. continued to communicate with Cambodia through U.N. Legal Counsel, Hans Corell.⁴⁷ In December 2002, the U.N.

38. Steven R. Ratner, *The United Nations Group of Experts for Cambodia*, 93 AM. J. INT'L L. 948, 949 (1999).

39. *Id.*

40. Group of Experts Report, *supra* note 34, at 219.

41. Cambodia initially rejected the Group of Experts proposals outright, abandoning the idea of an international court. Ratner, *supra* note 38, at 952. It intended to try Khmer Rouge officials in its domestic courts without international help. *Id.* With aid from the United States, Cambodia continued to negotiate a compromise with the UN that would include the international community. See STEPHEN HEDER & BRIAN D. TITTMORE, SEVEN CANDIDATES FOR PROSECUTION: ACCOUNTABILITY FOR THE CRIMES OF THE KHMER ROUGE, 19 (War Crimes Research Office, American University 2001), available at http://www.cij.org/pdf/seven_candidates_for_prosecution_Cambodia.pdf.

42. See Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, Reach Kram NS/RKM/0801/12 (August 10, 2001), available at <http://www.cambodia.gov.kh/krt/english/index.htm>.

43. *Id.*

44. Press Release, Amnesty Int'l, Cambodia: Flawed Trials in No One's Best Interest, AI Index ASA 23/001/2002—News Service Nr. 26 (Feb. 11, 2002), available at <http://web.amnesty.org/library/print/ENGASA230012002>.

45. *Id.*

46. *Id.*

47. Letter from Sok An, Senior Minister in Charge of the Office of the Council of Ministers, Kingdom of Cambodia, to His Excellency Hans Corell, Under Secretary-General, and The Legal Counsel of the United Nations (January 22, 2002), available at <http://www.mfaic.gov.kh/Information/Bulletin/2002/February/Feb%202002%20Bulletin.htm>; Letter from Sok An, Senior Minister in Charge of the Office of the Council of Ministers, Kingdom of Cambodia, to His Excellency Hans Corell, Under Secretary-General, and The Legal Counsel of the United Nations (November 23, 2001), available at <http://www.ocm.gov.kh/ocm/government/government116.htm>. See also Statement, United Nations High Commissioner for Human Rights, Secretary-General Replies to Cambodian Prime Minister's Letter on the Trial of Khmer Rouge Leaders (August 20, 2002), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/1D61F44196A25F19C1256C1C00309DED?opendocument>.

issued Resolution 57/228, which requested Kofi Annan resume negotiations with Cambodia under the stipulation that the negotiations “ensure that the Extraordinary Chambers exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law” and emphasize “the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status and work of the judges and prosecutors.”⁴⁸ The U.N. and Cambodia reached a final agreement in the summer of 2003.⁴⁹ On May 13, 2005, the U.N. adopted the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under the Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (“2003 Agreement”).⁵⁰ After the 2003 Cambodian national elections, the political parties were unable to reach a consensus on their roles in the government, leaving Cambodia without a functioning parliament and delaying the approval of the 2003 Agreement.⁵¹ The National Assembly did not convene until almost a year later on August 2, 2004.⁵²

Once in session, Cambodia’s national legislature did not hesitate to ratify the 2003 Agreement. The National Assembly discussed the Khmer Rouge Trials four days after it first convened, but was unable at that time to approve the 2003 Agreement because of technical errors.⁵³ On October 4, 2004, once the errors were resolved, the National Assembly approved amendments to the Law on the Establishment of the Extraordinary Chambers, which were in accordance with the 2003 Agreement.⁵⁴ The Senate of the Kingdom of Cambodia approved the amendments on October 8, 2004, and the Cambodian Head of State, Chea Sim, ratified the amendments on October 19, 2004.⁵⁵ The new law was promulgated to the people of Cambodia by Chea Sim on October 27, 2004.⁵⁶ Cambodian officials expect the Khmer Rouge trials to last three years, beginning in mid-2005.⁵⁷

The 2003 Agreement and the Law on the Establishment of the Extraordinary Chambers, as adopted and amended, establish two levels of court chambers—the Trial Court Chambers and the Supreme Court Chambers.⁵⁸ The Trial Court Chamber will consist of five judges—three Cambodian judges and two international judges.⁵⁹ Appeals from the Trial Chamber

48. G.A. Res. 57/228, U.N. GAOR 57th Sess., 77th Plen. Mtg., Agenda Item 109(b), at 1-5, U.N. Doc. A/RES/57/228 (2002).

49. *The World in Brief*, THE WASH. POST, June 7, 2003, at A20.

50. G.A. Res. 57/228, U.N. GAOR 57th Sess., 85th Plen. Mtg., Agenda Item 109(b), at 1, U.N. Doc. A/RES/57/228B (2003).

51. Alan Sipress, *Khmer Rouge Trials Stalled by Political Deadlock*, WASH. POST, May 5, 2004, at A24.

52. *Cambodian National Assembly First Sessions Set for 2 August*, BBC WORLDWIDE MONITORING, July 30, 2004, available at <http://www.lexis.com>.

53. “Mistakes” Cause New Delay for Khmer Rouge Tribunal in Cambodia, AGENCE FR. PRESSE, Aug. 27, 2004, available at www.westlaw.com.

54. See Law Approving the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Reach Kram NS/RKM/1004/004 (October 19, 2004), available at <http://www.cambodia.gov.kh/krt/english/index.htm>.

55. *Id.*

56. See Law on the Establishment of the Extraordinary Chambers, with Inclusion of Amendments, Reach Kram NS/RKM/1004/006 (October 27, 2004), available at <http://www.cambodia.gov.kh/krt/english/law%20on%20establishment.htm> [hereinafter Reach Kram NS/RKM/1004/006].

57. *Khmer Rouge Trial May Begin in Mid-2005*, ASIAN POLITICAL NEWS, Dec. 13, 2004, available at www.findarticles.com.

58. Reach Kram NS/RKM/1004/006, *supra* note 56, at 2.

59. *Id.* at 9.

will be heard by the Supreme Court Chamber, which will consist of seven judges—four Cambodian judges and three international judges.⁶⁰ The Supreme Court Chamber will serve both as the appellate court and as the court of final instance.⁶¹ To reach an affirmative decision, both Chambers require a super-majority.⁶² Decisions made by the Trial Court Chamber require affirmative votes from at least four of the five judges, and decisions made by the Supreme Court Chamber require affirmative votes from at least five of the seven judges.⁶³ The defendant will be released if a super-majority cannot be reached by the judges.⁶⁴ The international judges for both Chambers will be selected by the Cambodian Supreme Council of the Magistracy from a list of nominees generated by the U.N. Secretary-General.⁶⁵

The prosecution will have one Cambodian prosecutor and one international prosecutor responsible for deciding whom to charge with what crimes and for presenting evidence to the court.⁶⁶ One Cambodian and one international investigating judge will be responsible for collecting and investigating evidence and determining if a case can proceed to trial.⁶⁷ If either of the co-prosecutors or the co-investigating judges disagrees on whether to take a case to trial, the case will proceed to trial.⁶⁸ The dissenting party can appeal to a Pre-Trial Chamber that has a five-judge composition similar to the Trial Chamber.⁶⁹ Decisions not to take a case to trial require a super-majority vote and will advance if the judges cannot reach a majority.⁷⁰ The international prosecutor and investigating judge will be selected by the Cambodian Supreme Council of the Magistracy from a list of nominees generated by the U.N. Secretary-General.⁷¹

The 2003 Agreement and the Law on the Establishment of the Extraordinary Chambers, as adopted and amended, provide additional safeguards to ensure that the accused receive due process in accordance with the international standards of justice and fairness set out in articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights.⁷² The procedure of the Extraordinary Chambers will be held in accordance with Cambodian Law.⁷³ Where there is uncertainty regarding Cambodian Law, the courts may use international law.⁷⁴

Under article 14 of the International Covenant on Civil and Political Rights, the accused have the right to a fair and public hearing in which they shall be presumed innocent until proven guilty, obtain counsel of their choice or have counsel provided if they do not have sufficient means to pay for it, have adequate time and facilities to prepare a defense, examine

60. *Id.*

61. *Id.*

62. *Id.* at 14.

63. *Id.*

64. *Id.*

65. *Id.* at 11.

66. *Id.* at 16.

67. *Id.* at 23.

68. *Id.* at 20, 23.

69. *Id.*

70. *Id.*

71. *Id.* at 18, 26.

72. *Id.* at 33.

73. *Id.*

74. *Id.*

or have examined the witnesses against them, and not be compelled to testify against themselves.⁷⁵

The amended law also prevents the Cambodian Government from granting any additional amnesties or pardons to persons responsible for the crimes committed by the Khmer Rouge.⁷⁶ Moreover, the Extraordinary Chambers has the authority to determine the validity of prior pardons made by the Cambodian Government.⁷⁷

The 2003 Agreement and the Law on the Establishment of the Extraordinary Chambers, as adopted and amended, provide that the accused will only be charged with crimes recognized by Cambodia during the period from April 17, 1975 to January 6, 1979.⁷⁸ The Extraordinary Chambers will have subject matter jurisdiction under international law for the crime of genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, destruction of cultural property during armed conflict, and crimes against internationally protected persons.⁷⁹ In addition, the Extraordinary Chambers will have subject matter jurisdiction under domestic law as set forth in the 1956 Penal Code of Cambodia for the crimes of homicide, torture, and religious persecution.⁸⁰ Life imprisonment is the maximum penalty the Extraordinary Chambers can issue for conviction of any of these crimes.⁸¹

Amnesty International and other members of the international community have expressed concerns that the structure and format of the Extraordinary Chambers still do not ensure the proper safeguards in order to protect international standards of justice and fairness. The international community is concerned that the format of the Extraordinary Chambers will not guarantee the necessary impartiality and independence that an international court requires.⁸² There exists a fear, even with the provision requiring a supermajority vote, that the Cambodian Government will still have a strong influence over the trials and have the ability to interfere with decisions.⁸³ There are also concerns that Cambodia's judiciary is not adequately prepared to handle a task of this magnitude,⁸⁴ and that there are not enough safeguards to prevent the government and members of the Khmer Rouge from influencing and threatening potential witnesses who may participate in the trials.⁸⁵

The Cambodian Government expressed several reasons for the current structure, format, and location of the Khmer Rouge Trials. The main rationale behind keeping the trials in Cambodia is to help the people of Cambodia receive justice and reconciliation for the atrocities committed by the Khmer Rouge. The Khmer Rouge trials will be open to the

75. *Id.* at 35.

76. *Id.* at 40.

77. *Id.*

78. *Id.* at 2-8.

79. *Id.* at 4-8.

80. *Id.* at 3.

81. *Id.* at 38-39.

82. Scott Luftglass, *Crossroads in Cambodia: The United Nation's Responsibility to Withdraw Involvement from the Establishment of Cambodian Tribunal to Prosecute the Khmer Rouge*, 90 VA. L. REV. 893, 933-47 (2004).

83. See Group of Experts Reports, *supra* note 34, at 157-58.

84. *Id.* at 127.

85. *Id.* at 130; see also Luftglass, *supra* note 82, at 946-47 ("Victims and witnesses will not come forward to testify without the necessary assurances for their safety from international, rather than domestic authorities").

public, televised, and broadcast outside the court.⁸⁶ Another reason for keeping the trials in Cambodia and including Cambodian judges and prosecutors is to demonstrate the legitimacy of Cambodia's new Government to the Cambodian people and to the international community.⁸⁷ The Cambodian Government wants to demonstrate that it is able to maintain peace, political stability, and national unity.⁸⁸ In addition, by keeping the trials in Cambodia under Cambodian law, the Government hopes to demonstrate national sovereignty of matters concerning the Cambodian people.⁸⁹

Optimistically, starting in 2005, the people most responsible for the atrocities committed by the Khmer Rouge will be held accountable for their actions, and the people of Cambodia will begin to experience the justice and reconciliation that they have been without for over twenty-five years. After seven years of negotiations, the Cambodian Government and the U.N. have finally established a court system in which both international and Cambodian parties are involved. Whether the format of the Extraordinary Chambers will ensure the proper safeguards necessary to conduct a fair and impartial trial that meets international standards and quells the concerns of the international community remains to be seen.

VI. The Special Court for Sierra Leone

The year 2004 was extremely important for the Special Court for Sierra Leone (SCSL) as it saw the opening of the courthouse in March and the beginning of the first trials in June and July. The courthouse opening was eagerly awaited by the population of Sierra Leone, a small country of almost 5.9 million inhabitants, located on the western coast of Africa between Guinea and Liberia.⁹⁰ Sierra Leone was ravaged between 1991 and 2002 by a civil war pitting government forces against rebel factions resulting in tens of thousands of deaths.⁹¹ The Revolutionary United Front (RUF) and its leader, Foday Sankoh, committed multiple atrocities, such as amputations and rapes, in their effort to gain control of the country's diamond mines.⁹² At the time, the RUF was backed by the President of Liberia, Charles Taylor, who furnished them with weapons in exchange for diamonds.⁹³ The Civil Defense Forces (CDF), a pro-government faction led by Sam Hinga Norman, was also involved in committing atrocities against the population of Sierra Leone.⁹⁴ Even though the RUF and the government of Sierra Leone negotiated a peace agreement at Lome, Togo in 1999, the hostilities did not end until 2002.⁹⁵ In June 2000, the President of Sierra Leone,

86. Secretariat of the Royal Government Task Force, *An Introduction to the Khmer Rouge Trials*, at http://www.combodia.gov.kh/krt/english/introduction_eng/ (last visited May 27, 2005).

87. His Excellency Sok An, Senior Minister, Minister in Charge of the Office of the Council of Ministers, Kingdom of Cambodia, *The Rule of Law and the Legacy of Conflict*, Presented at Gaborne, Botswana (Jan. 16-19, 2003), at <http://www.camnet.com.kh/ocm/government/government139.htm>.

88. *Id.*

89. *Id.*

90. CIA, *The World Factbook: Sierra Leone*, available at <http://www.cia.gov/cia/publications/factbook/geos/sl.html> (last visited May 27, 2005).

91. *Id.*

92. Global Policy Forum, *Special Court for Sierra Leone*, at http://www.globalpolicy.org/intljustice/sierra_indx.htm (last visited May 27, 2005).

93. *Id.*

94. *Id.*

95. International Center for Transitional Justice, *The Special Court for Sierra Leone: The First Eighteen Months* (March 2004), available at http://www.ictj.org/downloads/sc_sl_case_study_designed.pdf.

Ahmad Tejan Kabbah, asked the U.N. to help his country set up a special tribunal to prosecute those responsible for the crimes committed during the civil war.⁹⁶

On August 14, 2000, the U.N. Security Council, in Resolution 1315 (2000), requested that the Secretary General, Kofi Annan, negotiate an agreement with the government of Sierra Leone to set up a special court to prosecute those responsible for the violations of international humanitarian laws during the civil war.⁹⁷ In January 2002, the U.N. and the government of Sierra Leone signed the agreement establishing the SCSL.⁹⁸ The SCSL was designed as a “hybrid tribunal,” with mixed jurisdiction and composition. The mandate of the SCSL only extends to the prosecution of those “who bear the greatest responsibility for serious violations of international humanitarian law” committed in Sierra Leone after November 30, 1996.⁹⁹ The courthouse for the Special Court for Sierra Leone opened officially on March 10, 2004.¹⁰⁰

The Special Court includes the office of the Prosecutor, which is responsible for investigating, indicting, and prosecuting those accused of committing atrocities during the civil war, the office of the Principal Defender, which ensures that the rights of the accused are protected, and the Registry which is responsible for providing administrative support to the Court, the Trial Chamber, and an Appeals Chamber.¹⁰¹

On May 7, 2004, in an unprecedented decision, the Trial Chamber approved a motion by prosecutors to add a new count of “forced marriage” to the indictments issued against the three leaders of the RUF and Armed Forces Revolutionary Council (AFRC).¹⁰² This new count arises under the category of “sexual violence.”¹⁰³ During the civil war, a widespread practice of the rebel forces was to capture women, sexually assault them, and force them to bear children.¹⁰⁴ This decision of the SCSL is ground breaking, as it will be the first time under international law that “forced marriage” will be prosecuted as a crime against humanity.¹⁰⁵

The Appeals Chamber consists of five judges.¹⁰⁶ Two judges were appointed by the government of Sierra Leone, while the other three were appointed by the Secretary General.¹⁰⁷ In May 2004, Justice Ayoola of Nigeria became Presiding Justice over the Appeals Chamber

96. *Id.*

97. *Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, Appendix 2, U.N. Doc. S/2002/246 (2002), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/274/42/img/N0227442.pdf?OpenElement>.

98. *Id.*

99. Special Court for Sierra Leone, *Statute of the Special Court for Sierra Leone*, at <http://www.sierra-leone.org/specialcourtstatute.html> (last visited May 27, 2005).

100. Press Release, Special Court for Sierra Leone, Special Court for Sierra Leone Officially Opens New Courthouse (March 10, 2004), at <http://www.sc-sl.org/Press/pressrelease-031004.html>.

101. Special Court for Sierra Leone, *Basic Facts*, available at <http://www.sc-sl.org/basicfacts pamphlet.pdf> (last visited May 27, 2005).

102. Press Release, Special Court for Sierra Leone, Trial Chamber Approves New Count of Forced Marriage (May 7, 2004), at <http://www.sc-sl.org/Press/pressrelease-050704.html>.

103. *Id.*

104. Angela Stephens, *Forced Marriage Pursued as Crime in Sierra Leone Tribunal Cases*, UN WIRE (Apr. 16, 2004), available at <http://www.globalpolicy.org/intjustice/tribunals/sierra/2004/0416marriage.htm>.

105. *Id.*

106. Special Court for Sierra Leone, *The Appeals Chamber*, at <http://www.sc-sl.org/chambers.html> (last visited May 27, 2005).

107. *Id.*

and President of the Special Court.¹⁰⁸ He was appointed along with Justice Fernando of Sri Lanka, the Vice President, and Justice Winter of Austria by the Secretary General of the U.N.¹⁰⁹ Justice Ayoola replaced Justice Robertson who had completed his term as President of the SCSL.¹¹⁰ The Presiding Justice is elected for a non-renewable term of one year.¹¹¹ The Government of Sierra Leone appointed Justice Robertson of the United Kingdom and Justice King of Sierra Leone.¹¹²

An historic decision was reached on June 1, 2004 when the Appeals Chamber, in a majority decision, ruled that recruitment of child soldiers was a crime under international law.¹¹³ The Defense Counsel for one of the accused had argued that it was not a crime under international law to recruit child combatants at the time the acts were accomplished.¹¹⁴ In reaching its decision, the Court looked at both international agreements and international customary law.¹¹⁵ The Court found that, under international customary law, the prohibition against recruiting children as soldiers had been widely recognized and accepted before November 1996, and that it had been considered a war crime long before being expressly "set out as an international crime in treaty law."¹¹⁶ For the first time, an international war crimes tribunal is prosecuting child recruitment.¹¹⁷

Another important decision was reached by the Appeals Chamber on March 13, 2004, when it refused to recognize an amnesty for war crimes and crimes against humanity granted to the rebel forces under article IX of the Lome Peace Agreement.¹¹⁸ The Court found that it had jurisdiction to try the indicted because, as an international tribunal, it was not subject to the constitution of Sierra Leone, and furthermore, the U.N. had not been a party to the Peace Agreement.¹¹⁹ It concluded that "[t]he amnesty granted under Article IX of the Lome Peace Agreement does not bar the prosecution of an accused for international crimes committed before July 1999 before the Special Court."¹²⁰

As an independent international tribunal sitting in the country in which the conflict occurred and staffed with a mixture of international and national members, the Special Court differs in many ways from other international tribunals such as the ICTR and the ICTY.¹²¹ The Special Court has faced some difficulties this year based on these differences.

108. *Id.*

109. *Id.*

110. *Id.*; Press Release, Special Court for Sierra Leone, Justice Renate Winter to Act as President of the Special Court (Mar. 16, 2004), at <http://www.sc-sl.org/Press/pressrelease-031604.html>.

111. *Id.*; see also *Appeals Chamber*, *supra* note 106.

112. *Appeals Chamber*, *supra* note 106.

113. Press Release, Special Court for Sierra Leone, Appeals Chamber Rules Recruitment of Child Combatants a Crime Under International Law (June 1, 2004), at <http://www.sc-sl.org/Press/pressrelease-060104.html>.

114. *Id.*

115. *Id.*

116. *Id.*

117. Elizabeth Blunt, *Child Recruitment 'Was War Crime,'* BBC NEWS, June 1, 2004, available at <http://www.globalpolicy.org/intjustice/tribunals/sierra/2004/0601was.htm>.

118. Osman Benk Sankoh, *Special Court Rules It Has Jurisdiction to Try Indictees and Not Subjected to Sierra Leone's Constitution*, ALLAFRICA, Mar. 18, 2004, available at <http://www.globalpolicy.org/intjustice/tribunals/sierra/2004/0318amnesty.htm>.

119. *Id.*

120. *Id.*

121. Human Rights Watch, *Bringing Justice: The Special Court for Sierra Leone, Accomplishments, Shortcomings, and Needed Support* (Sept. 8, 2004), at <http://www.hrw.org/reports/2004/sierraleone0904/>.

One of the major differences between the SCSL and the both ICTY and ICTR is found in the mandates under which they were established.¹²² The ICTR and ICTY were created under chapter VII of the U.N. Charter, while the SCSL was created by an agreement between the U.N. and the government of Sierra Leone.¹²³ The ICTY and ICTR are under U.N. jurisdiction and operate independently of Rwanda or the former Yugoslavia.¹²⁴ These courts have the authority under chapter VII to order governments to cooperate with them.¹²⁵ The Special Court does not have that power and must instead rely on the willingness of other governments to act on its requests.¹²⁶ This has proven to be a major drawback as the Court has not yet been able to obtain the extradition of Charles Taylor from Nigeria.¹²⁷

Another important difference between the SCSL and other international tribunals is the fact that the court is staffed by both international and national members in all of its different offices, including the Chambers.¹²⁸ An advantage of including nationals is that it helps the SCSL run more efficiently and increases its legitimacy amongst the population of Sierra Leone.¹²⁹ One of the criticisms faced by the Court concerning its staffing is that, at this time, most of the key decision-making positions are held by international recruits, such as Americans, the British and Australians, while Sierra Leoneans have been relegated to menial office tasks.¹³⁰

Unlike the tribunal for Rwanda, which sits in Arusha, Tanzania, and the tribunal for the former Yugoslavia, which sits in The Hague, Netherlands, the Special Court for Sierra Leone is located in the country in which the conflict occurred.¹³¹ The Court's location in Freetown, Sierra Leone's capital, allows the population of the country to be more involved and more connected to the prosecution of the accused, unlike the ICTR and ICTY which have very little impact on the populations or the judicial systems of Rwanda and the former Yugoslavia.¹³² The security of the Special Court, because of its location, is the main challenge faced by the court.¹³³ This concern has been brought to the forefront this year as the case against Sam Hinga Norman, a leader of the CDF regarded by many Sierra Leoneans as a hero and liberator, is being heard by the Court.¹³⁴

As of 2004, the Special Court for Sierra Leone has indicted eleven people.¹³⁵ Those indicted are all associated with the three warring factions which ravaged the country during

122. Michelle Sieff, *A Special Court for Sierra Leone*, CRIMES OF WAR PROJECT (May 2001), at <http://www.crimesofwar.org/tribun-mag/sierra-print.html>.

123. *Id.*

124. *Id.*

125. Human Rights Watch, *supra* note 121, at 11.

126. *Id.*

127. International Center for Transitional Justice, *supra* note 95.

128. *Id.* at 9.

129. *Id.*

130. Theophilus S. Gbenda, *Special Court: Prosecutor Practices Racism*, STANDARD TIMES, Oct. 21 2004, at ¶¶ 1-12.

131. International Center for Transitional Justice, *supra* note 95, at 8.

132. *Id.*

133. *Id.* at 9.

134. *Id.* at 6, 9.

135. Special Court for Sierra Leone, *About the Special Court for Sierra Leone*, at <http://www.sc-sl.org/about/html> (last visited May 20, 2005).

the civil war.¹³⁶ These three factions are the RUF, the CDF and the AFRC. The accused are charged with war crimes, crimes against humanity, and other serious violations of international humanitarian law.¹³⁷ The charges include, among other things, "murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an armed force, and attacks on United Nations peacekeepers and humanitarian workers."¹³⁸ On January 27, 2004, the Trial Chamber of the Special Court ruled that the nine accused in the court's custody should be tried jointly in three groups, based on the faction to which they belonged during the civil war.¹³⁹ The Trial Chamber is currently holding the trials of the CDF and RUF members.¹⁴⁰ The Court hears each case for about one month at a time, on a rotating basis.¹⁴¹

On June 3, 2004, trial began at the Special Court for former members of the CDF.¹⁴² The three accused, Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa are facing an eight-count indictment for crimes against humanity, war crimes, and other serious violations of international humanitarian law.¹⁴³ The charges against the CDF accused include "unlawful killings, physical violence and mental suffering, looting and burning, terrorizing the civilian population and collective punishment, and the use of child soldiers."¹⁴⁴

In a surprising move, reminiscent of Milosevic in The Hague, Sam Hinga Norman stood up before the Court on the first day of trial and requested that he be allowed to represent himself.¹⁴⁵ Even though the Trial Chamber ruled unanimously that the accused had a right to self-representation, it found that the right was not absolute and could only be exercised with the assistance of counsel.¹⁴⁶ At present, Hinga Norman represents himself with the assistance of three court-appointed counsels.¹⁴⁷ The indictment of Sam Inga Norman was controversial at the time it was announced and still is today, as many people in Sierra Leone consider him a hero and a liberator for having fought the rebel forces.¹⁴⁸ Norman was Minister of Internal Affairs in the present Sierra Leone government at the time of his arrest.¹⁴⁹

The trial for the three former leaders of the RUF started on July 5, 2004.¹⁵⁰ Issa Hassan Sesay, Morris Kallon, and Augustine Gbao were indicted in 2003 on eighteen counts of

136. *Id.*

137. *Id.*

138. *Id.*

139. Press Release, Special Court for Sierra Leone, Trial Chamber Joinder Decision: Accused to Be Tried in Three Groups (Jan. 27, 2004), at <http://www.sc-sl.org/Press/pressrelease-012704.pdf>.

140. Human Rights Watch, *supra* note 121, at 12.

141. *Id.*

142. Special Court for Sierra Leone, *CDF Trial*, at <http://www.sc-sl.org/CDF.html> (last visited May 27, 2005) [hereinafter Special Court, *CDF Trial*].

143. *Id.*

144. Press Release, Special Court for Sierra Leone, First Trial to Begin on June 3 (May 11, 2004), at <http://www.sc-sl.org/Press/pressrelease-051104.html>.

145. Somini Sengupta, *Sierra Leone Trial Opens: But Prime Suspect is Conspicuously Absent*, INT'L HERALD TRIB., June 4, 2004, at 5.

146. Coalition for International Justice, *The Court Decides Hinga Norman Can Represent Himself (but Only with Assistance of Counsel)* (June 9, 2004), at <http://www.cij.org>.

147. Special Court, *CDF Trial*, *supra* note 142.

148. Abdul Karim Bangura, *Sierra Leone: The Problems with the Special Court for Sierra Leone*, STANDARD TIMES, July 5, 2004, at ¶¶ 9-14.

149. *Id.*

150. Special Court for Sierra Leone, *RUF Trial*, at <http://www.sc-sl.org/RUF.html> (last visited May 27, 2005).

war crimes, crimes against humanity, and other serious violations of international humanitarian law.¹⁵¹ The charges against these three former leaders of the RUF include terrorizing the civilian population, collective punishments, unlawful killings, sexual and physical violence, the use of child soldiers, abductions and forced labor, looting and burning, and attacks on United Nations peacekeepers.¹⁵²

On March 13, 2004, the Appeals Chamber ruled that Justice Geoffrey Robertson would be allowed to stay on the Special Court, but would be barred from adjudicating in the trial involving RUF accused.¹⁵³ The RUF defense team had asked for the removal of Justice Robertson from the Court because of bias against the RUF defendants.¹⁵⁴ Although Justice Robertson is regarded as “one of Britain’s leading human rights lawyers,” his objectivity came into question because of a book he had written a few years earlier depicting the RUF as a “bloodthirsty criminal enterprise.”¹⁵⁵ Justice Robertson had also accused the RUF in his book of “grotesque crimes against humanity.”¹⁵⁶ Justice Robertson had refused to step down on his own.¹⁵⁷ The Special Court based its ruling upon the fact that his book, *Crimes Against Humanity: the Struggle for Global Justice*, could be seen as prejudicing the hearings.¹⁵⁸

Witnesses began testifying this year at the Special Court in the RUF trial.¹⁵⁹ Their stories reveal the horror of the atrocities they faced at the hands of this faction.¹⁶⁰ Their testimony includes accounts of rebels using machetes to cut off hands and feet, raping pregnant women and killing children.¹⁶¹ Some of the rebels enlisted by the RUF included children as young as five years old.¹⁶² One of the witnesses testified that he had been abducted by the RUF at the age of twelve and forced to rape a fifteen year old girl at gun point.¹⁶³ Many more witnesses are scheduled to testify before the end of the trial.

In 2003, three former leaders of the AFRC, Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, were indicted on eighteen counts of war crimes, crimes against humanity, and serious violations of international humanitarian law.¹⁶⁴ Their trial has not yet started.¹⁶⁵

As of today, nine accused are standing trial before the Special Court.¹⁶⁶ Four others were indicted on March 7, 2003.¹⁶⁷ Those indicted included former Liberian President Charles

151. *Id.*

152. *Id.*

153. Press Release, Special Court for Sierra Leone, Justice Geoffrey Robertson to Remain on Appeals Chamber but Won’t Hear RUF Cases (Mar. 13, 2004), at <http://www.sc-sl.org/Press/pressrelease-031304.html>.

154. *Id.*

155. Rory Carroll, *War Crime QC Under Pressure to Quit after Bias Claims*, *GUARDIAN* (Mar. 10, 2004), available at <http://www.globalpolicy.org/intljustice/tribunals/sierra/2004/0310quit.htm>.

156. Hugh Davies, *War Crimes Tribunal Bars its Judge*, *TELEGRAPH* (Mar. 15, 2004), available at <http://www.globalpolicy.org/intljustice/tribunals/sierra/2004/0315bars.htm>.

157. *Id.*

158. *Id.*

159. Clarence Roy-Macaulay, *Sierra Leoneans Testify on Rebel Abuse*, *ASSOCIATED PRESS* (July 21, 2004), available at <http://www.globalpolicy.org/intljustice/tribunals/sierra/2004/0721account.htm>.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. Special Court for Sierra Leone, *AFRC Trial*, at <http://www.sc-sl.org/AFRC.html> (last visited May 27, 2005).

165. *Id.*

Taylor, RUF leaders Foday Sankoh and Sam Bockarie, and former AFRC leader Johnny Paul Koroma.¹⁶⁸ Sankoh and Bockarie both died before their trials commenced, and the indictments against them were withdrawn on December 8, 2003.¹⁶⁹ The location of Koroma is currently unknown, but he is believed to be dead.¹⁷⁰

Charles Taylor is in exile in Nigeria where he was given asylum in August 2003 after being forced from power in Liberia.¹⁷¹ On May 31, 2004, the Appeals Chamber ruled that the former Liberian President was subject to criminal proceedings before the Special Court.¹⁷² His defense counsel argued that, as a sitting president at the time of his indictment in 2003, he was immune from prosecution under international customary law. His counsel had also argued that the Special Court, as a national court, did not have jurisdiction to indict Charles Taylor. In a landmark decision, the Appeals Chamber concluded that the fact that the former Liberian President was a head of state at the time of his indictment was not a bar to his prosecution. The Appeals Chamber further found that the Special Court is not part of Sierra Leone's judicial system but is a true international criminal court formed under international law and, as such, has jurisdiction over the former President.¹⁷³ Currently, Charles Taylor remains in Nigeria because the Nigerian government has not yet agreed to extradite him to Sierra Leone to stand trial.¹⁷⁴ Even though the Chief Prosecutor, David Crane, is optimistic that Nigeria will allow the repatriation of the former Liberian President to Freetown, others do not agree.¹⁷⁵ In October 2004, Sierra Leone's President, Ahmed Tejan Kabbah, endorsed the Nigerian government's decision to grant asylum to Charles Taylor.¹⁷⁶ President Kabbah further added that he would not pressure Nigeria's President Obasanjo to hand over Charles Taylor to the Special Court.¹⁷⁷

Since the first trials opened on June 3, 2004, the SCSL has received criticism from some and praise from others. Many are concerned with the fact that the Special Court is limited in time, by only being able to prosecute crimes committed after 1996 and by its mandate to only bring to justice "persons who bear the greatest responsibility."¹⁷⁸ They fear that the Special Court will not be able to hold accountable those who committed atrocities but were not in leadership positions. At this time, the major problem faced by the Special Court, besides its lack of funding, is the fact that Nigeria has not yet surrendered Charles Taylor. Justice for the population of Sierra Leone will not be done until one of the main instigators of the conflict is brought before the Special Court to answer for his crimes.

166. Special Court for Sierra Leone, *Other Cases: Taylor, Sankoh, Bockarie, Koroma*, at <http://www.sc-sl.org/cases-other.html> (last visited May 27, 2005).

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. Human Rights Watch, *supra* note 121.

172. Press Release, Special Court for Sierra Leone, Charles Taylor is Subject to Criminal Proceedings Before the Special Court (May 31, 2004), at <http://www.sc-sl.org/Press/pressrelease-053104.html>.

173. *Id.*

174. *War Court Zeros in on Taylor*, THE ANALYST (Sept. 23, 2004), available at <http://www.globalpolicy.org/intljustice/wanted/2004/0923nigeria.htm>.

175. *Id.*

176. *Liberia: Kabbah Endorses Taylor's Asylum*, THE ANALYST (Nov. 3, 2004), available at <http://allafrica.com/stories/printable/200411030343.html>.

177. *Id.*

178. Special Court for Sierra Leone, *Statute of the Special Court for Sierra Leone*, available at <http://www.sc-sl.org/scsl-statute.html> (last visited May 27, 2005).

VII. Sudan

Sudan frequently occupied headlines in 2004. Articles with buzzwords such as genocide and Janjaweed trailed behind the headlines providing comprehensive details of the current situation in Sudan. But the articles could not predict what would come next for the country. While it is easy to see how the situation escalated,¹⁷⁹ it is difficult to determine how to restore stability to a region plagued by internal strife and international indifference.

In 2004, the U.N. Security Council adopted a series of resolutions in response to the ongoing situation in Sudan. On June 11, 2004, the Security Council recognized the need for a U.N. advanced team dedicated to international monitoring of Sudan. The Security Council also called for the team to prepare a peace support operation that would be introduced once the involved parties signed a Comprehensive Peace Agreement.¹⁸⁰ Additionally, the resolution stressed the need for a public information campaign that would foster an understanding of the peace process.¹⁸¹ The June 11th resolution made clear that the U.N. would take a strong stance on the situation in Sudan, but would simultaneously attempt to keep the Sudanese people informed.

On July 30, 2004, the Security Council took notice of the fact that the situation in Darfur was not improving, and its response took a tone which bordered on scolding. The resolution expressed the general concern of the Council that the N'Djamena Ceasefire Agreement of April 8, 2004, was not being adhered to, and chastised the government of Sudan for failing to disarm Janjaweed militias.¹⁸² The resolution went so far as to state that, in the event of continuing non-compliance, the Security Council would consider further actions. Actions under article 41 of the U.N. Charter would include interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, as well as the severance of diplomatic relations.¹⁸³

On September 18, 2004, the Security Council expressed grave concern about the lack of progress in the area of civilian security.¹⁸⁴ These concerns resulted in a request by the Security Council that the Secretary General establish an international inquiry commission to investigate alleged violations of international humanitarian law.¹⁸⁵

Reactions to the September 18th meeting varied. Several speakers praised the balanced nature of Resolution 1564, while others argued that threatened sanctions were not the most

179. The current problems in Sudan find their roots in the actions of then President Nimeiri in 1983. *The United Nations and Humanitarian Intervention: Building Legitimacy by Confronting Our Past—An Open Letter*, 16 FLA. J. INT'L L. 483, 506-07 (2004). Nimeiri, housing a strong desire to impose his government's version of Islamic law on all of Sudan, led the country into a civil war which devastated the region for the next twenty-plus years. *Id.* While the southern Sudanese were represented by the Sudan People's Liberation Movement (SPLM), the National Islamic Front (NIF) gained power in the North when they funneled their discontent with Nimeiri into a coup which successfully overthrew the president. *Id.* This allowed the NIF to take control of the entire Sudanese government in Khartoum, and secured the NIF's ability to systematically eliminate all political and religious dissent. *Id.* The international community eventually took notice in 1989, and implemented various measures to alleviate the situation, but the tactics proved unsuccessful. *Id.* at 507-08. To this day, the NIF continues to act as an aggressor towards the SPLM, fringe militias, and civilians, while the U.N. offers minimal help in the form of humanitarian aid and negotiation assistance. *Id.* at 508-09.

180. S.C. Res. 1547, U.N. SCOR, 59th Sess., 4988th mtg., at 1-2, U.N. Doc. S/RES/1547 (2004).

181. *Id.*

182. S.C. Res. 1556, U.N. SCOR, 59th Sess., 5015th mtg., at 2-3, U.N. Doc. S/RES/1556 (2004).

183. U.N. Charter art. 41.

184. S.C. Res. 1564, U.N. SCOR, 59th Sess., 5040th mtg., at 2, U.N. Doc. S/RES/1564 (2004).

185. *Id.*

diplomatic way to handle the crisis in Sudan.¹⁸⁶ Sudan's representative to the meeting considered the resolution to be a "fatal blow" and alleged that the resolution failed to consider the Sudanese government's progress.¹⁸⁷ Regardless of the varied reactions, one thing was clear—the situation in Sudan was quickly deteriorating and affirmative measures needed to be taken. Security Council Resolutions 1547, 1556, and 1564 set the stage for international actors who hoped to close the curtain on offenses against the civilians of Sudan. In evaluating what is to come for Sudan, however, enforcing norms of international criminal law must be done to resolve this crisis.

186. *Id.*

187. *Id.*