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The anthropological dimension of international crimes and international criminal justice

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Introduction

The enforcement of norms involves a series of objective actions, in the sense that what is at stake is not the perspective of the judge, the prosecutor, the accused or the victim as to the appropriateness and legitimacy of the relevant law. On the contrary, subjectivity should play no role in the administration of criminal law and the entire criminal justice system operates in such a way as to avoid the infusion of personal biases. This, of course, is welcome because the law is already publicly available and hence any personal views of the judge or the prosecutor would violate the principle against retroactivity. Hence, this chapter attempts to explain why a departure is necessary in order to understand the particular context of societies in conflict and the social interactions inherent therein. For a very long time, international crimes have been assessed solely on the basis of the norms regulating armed conflict and criminal conduct, absent a thorough examination of the social and cultural context within which the relevant actors existed. However, what is different between the perspective of culture and society provided by anthropology as opposed to other social sciences is its particular vantage point; that is, its view of society and culture from the point of view of the direct participants under observation. The anthropologist is interested in the way that his subjects view family, lineage, religion, work, socialisation and everything else that makes them who they are and behave in the way they do. It is therefore no accident that the term *cultural relativism*, which is so prevalent in human rights discourse, originated in anthropology but possessed from the outset a very different meaning.[1] Boas, who first conceived but did

[1] In human rights it is taken to mean that culture ultimately validates the legitimacy and application of particular rights, thereby rejecting the notion that human rights apply to all

not coin the term, was dissatisfied with evolutionist theories of his time, which viewed some civilisations as higher or superior to others. To him cultural relativism was a method of examining cultural variation free from prejudice. Given that prejudice is inherent in all observation of the external world, Boas sought to see the world from the eyes of the informants, or natives (the term is not used pejoratively).[2] It is only when one possesses a good enough understanding of the lives of others that one is legitimised to offer moral judgement against them and, in the case at hand, to apply criminal sanctions in a just and equitable manner.

As the chapter goes on to demonstrate, our understanding of a particular culture prior to the outbreak of hostilities or mass human rights violations serves numerous purposes which for the most part have been outside the radar of contemporary international criminal tribunals and their respective mandates. At a functional level, anthropology may tell us what the affected societies aspire to and what they think about international criminal justice,[3] which in turn should shape – not necessarily dictate – the international community's relevant transitional justice policies.[4] This aside, culture paints a fairly accurate picture as regards hierarchies, membership and affiliation in clans and kinship mechanisms, which in turn helps determine complex liabilities, such as command responsibility and joint criminal enterprise

without distinction; i.e., that human rights are universal. This conception of culture risks justifying violations of human rights, as is the case with the practice of female genital mutilation. See J. Donnelly, 'Cultural Relativism and Universal Human Rights', (1984) 6 *Human Rights Quarterly* 400.

[2] F. Boas, 'Museums of Ethnology and their Classification', (1887) 9 *Science* 589.

[3] See P. Pham and P. Vinck, 'Research Note on Attitudes about Peace and Justice in Northern Uganda', Human Rights Centre at UC Berkeley Report (August 2007) at 2. Of those surveyed in Northern Uganda 29 per cent were in favour of the ICC, 28 per cent preferred Ugandan courts, 20 per cent were in favour of the amnesty commission, while only 3 per cent supported the sole use of traditional justice mechanisms. However, when asked if they favoured peace with amnesty or peace with trials, 80 per cent of the respondents supported peace with amnesty.

[4] Anthropology has been employed extensively by the International Bank for Reconstruction and Development (IBRD) in relation to projects that affect the livelihoods of indigenous peoples. In most recorded cases, however, the IBRD ignores the true wishes of the affected group and is disinclined towards any form of consensual social engineering. In the case of the indigenous Baka/Bakola of Cameroon, for example, the group wished to escape their subservient status to another tribe and acquire land and educate their children. The consultants advised the IBRD to retain the group's traditional nomadic status and simply to provide them with monetary forms of compensation for the impact caused by the project to their traditional livelihood. See T. Griffiths, 'Indigenous Peoples and the World Bank: Experiences with Participation' (Forest Peoples Program, 2005), available at www.forestpeoples.org/sites/fpp/files/publication/2011/08/wbipsandparticipjul05eng.pdf.

(JCE), among others. Moreover, anthropological observation helps us decipher the contextual meaning of concepts that verge between the social and the natural sciences, such as race, ethnicity and gender, by means of their *social construction*. This chapter paves the way for the realisation of the crucial function of anthropology in the investigation of mass crimes and the need for specialist research alongside legal developments.

Why anthropology is relevant to the investigation of international crimes

Anthropology and law seem at first glance to have nothing in common. The first seeks to elucidate collective human behaviour and assess the particular meanings understood by the participants (or *informants* in anthropological parlance), whereas the second is concerned with rules and order. It is evident that, since rules and order are not produced in a void but rather with a view to regulating human relations, it follows that law is a necessary component of culture in the same manner as work, leisure, art, religion and others.[5] Law need not necessarily be formal, as is otherwise the case with legislation that is promulgated under strict constitutional procedures, but it may just as well be informal without the sanction of government. This informal law does not only exist in past and present rural societies in the heartlands of Africa and Asia, but also in the very midst of industrialised Western societies. The so-called *lex mercatoria* and the pursuit of self-regulation by particular industries, as is indeed the very concept of contract and party autonomy thereto, is evidence of man's desire to regulate in certain cases human interaction by means of informal, but no less binding, prescriptions.[6] Besides regulating human relations, both formal and informal law, particularly the latter, provide evidence of social relations, status and social interaction within a given community. By way of illustration, the village chief is typically the judge and the recognised authority in the interpretation of customary law and, as such, is regarded as a revered figure. Equally, the male warriors of the tribe, whose authority to hunt is recognised as a

[5] For a general overview, see J. M. Conley and W. M. O'Barr, 'Legal Anthropology comes Home: A Brief History of the Ethnographic Study of Law', (1993) 27 *Loyola of Los Angeles Law Review* 41.

[6] According to Teubner, the ultimate validation of *lex mercatoria* rests on the fact that not all legal orders are created by the nation state and, accordingly, that private orders of regulation can create law. G. Teubner, 'Global Bukowina: Legal Pluralism in the World Society', in G. Teubner (ed.), *Global Law without a State* (Dartmouth, 1997) at 15.

customary entitlement, may enjoy first rights to the tribe's game. Social status and the existence of complex roles and rules are also evident in the internal sphere of criminal gangs operating in industrialised settings.[7] In Islamic law, too, the *social* from the *legal* is inseparable in countries strictly adhering to classical *Shariah*. For example, the inferior status ascribed to women in terms of entitlements (e.g., the right to be elected, weight of testimony, etc.) also determines their social status.

The study of social interaction should have been of primary importance to international criminal tribunals, but in practice it has been peripheral if not outright redundant. The Office of the Prosecutor (OTP) in the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) did assess various background aspects to the conflicts in Yugoslavia and Rwanda, but the emphasis was on political and military organisation. The prosecutors and their assistants were naturally lawyers, some of them successful prosecutors in their own jurisdictions, where the nature of crimes was pretty straightforward and background assessments were unnecessary. Hence, no one even considered that perceptions about class, ethnicity, race, symbolism, peace, aggression, and the like, by the natives themselves were of any significance to the work of the tribunals. This is a particularly significant observation given that two of the stated aims of the tribunals were their capacity to record history and promote reconciliation.[8] It is certainly difficult to record the nature of particular discord without a solid understanding of the views and perceptions of the participants in the turmoil. Equally, reconciliation is meaningless unless one is acutely aware of the divisions of the feuding parties as expressed and felt by them alone; although, admittedly, external, unbiased, views are also significant.

[7] See J. D. Vigil, 'Urban Violence and Street Gangs', (2003) 32 *Annual Review of Anthropology* 225; D. Lamm Weisel, *Contemporary Gangs: An Organisational Analysis* (LBF Scholarly Publishing, 2002).

[8] For example, reference to universally accepted anthropological thinking about aggression could have been incorporated in the historical analyses of the Tribunals' judgment. According to this, there is no empirical basis to the contention that aggression is an inborn quality. In fact, the word itself is unknown in the more traditional societies, such as the Chewong in the Malay Peninsula. If anything, humans exhibit a disposition towards solidarity and peace. See S. Howell and R. Willis (eds.), *Societies at Peace* (Routledge, 1989) at 25 ff. Without such an analysis the Tribunal may well, inadvertently or otherwise, give the impression to the entire world that the perpetrator's entire ethnic group is naturally inclined towards violent crime, which cannot surely lead to any sort of reconciliation and explains to a large degree the hostility of the Serbian people towards the ICTY.

The ICTY, in a very cursory manner, opined that Bosnian Muslim identity and culture was traced to 'the long Turkish' occupation[9] and that the three ethnic groups (i.e., Muslim, Serb and Croat) lived largely in separate villages but often intermarried,[10] and that in any event they all considered themselves Slav.[11] It concluded its anthropological analysis by claiming that 'politics began to divide along the lines of ethno-national communities'.[12] This, of course, fails to say anything about the actual identity and culture professed by Bosnians. Culture, by way of illustration, is a complex phenomenon and scholars such as Geertz have viewed it as a web of shared meanings expressed through public communication, not in the sense of sharing the same knowledge and skills but in the sense that persons who in fact share a culture share a common world view that is expressed through common symbols and language.[13] What is this Slavic world view in Bosnia and what metaphors or literal meanings are used to express it? Moreover, if the people of Bosnia had achieved social integration, how was this possible given their conflicting individual/clan tendencies? There are various ways of thinking about this conundrum, so I will mention only two. Barth believed that shared values, expressed through interaction, are the result of strategic and calculating *transactions* between agents driven by a desire to achieve value maximisation.[14] For Bourdieu, in order to assess whether the members of a group share or do not share common values one must distinguish that which is taken for granted by the group and that which is beyond discussion (*doxa*), such as faith in God or unquestionable adherence to a political system, from things that are actively discussed among group members and are not therefore axiomatic (opinion).[15] If we knew precisely what constituted common or disparate *doxic* perceptions among the various groups in Bosnia, pertinent choices would have been severely curtailed and we would also understand by default which *doxic* beliefs may have in time shifted to the realm of opinion. In fact, anthropology has largely dismissed the notion of static ethnic identity

[9] *ICTY Prosecutor* v. *Tadić*, Trial Judgment (7 May 1997), para. 56. In reality, a Turkish nation and distinct Turkish culture were proclaimed in the early 1920s, although the neo-Turkish movement was active at least a decade before. Until then, from the fourteenth to the early twentieth century what the ICTY calls 'Turkish' was in fact distinctly Ottoman, which was quintessentially multicultural, as are all empires.

[10] Ibid., para. 64. [11] Ibid., para. 67. [12] Ibid., para. 83.

[13] C. Geertz, *The Interpretation of Cultures* (Basic Books, 1973).

[14] F. Barth, 'Models of Social Organisation' (Royal Anthropological Institute Occasional Paper No. 23, 1966). These transactions are numerous and are continuously negotiated by the relevant actors.

[15] P. Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press, 1977) at 164–70.

based merely on the enjoyment of a particular culture and belonging to a specific ethnic group.[16] Boundaries between ethnic groups, especially those living in close proximity to one another, are ambiguous and in a state of continuous fluctuation. The characterisation by the ICTY that the Slav population of Bosnia in 1993 identified itself along three ethnic groups with some inter-marriages is at best simplistic, but in reality it was wrong and was not predicated on any scientific data. Anthropologists studying Bosnian society agreed with the general theory that variations among ethnic groups are greater on key indicators than in respect of their systematic differences. They dismissed the conflict(s) as ethnic or that it could be explained by reference to culture and ancient animosities.

> The conflicts were relatively recent and they were not caused in any way by cultural differences. In important respects, the differences between town and country were greater than between, for example, Serbs and Croats sharing the same territory.[17]

As the chapter will subsequently demonstrate, anthropological research is not only important for possessing a clear understanding of the background of conflicts and the motives of the immediate perpetrators and their victims. It provides us, among others, with the necessary tools for deciphering the elements of international crimes, such as 'racial',[18] 'ethnic' and 'religious' in respect of genocide, accessory liability and JCE in respect of 'kinship',[19] and

[16] See F. Barth, *Ethnic Groups and Boundaries: The Social Organisation of Culture Difference* (Little, Brown & Co, 1969).

[17] T. Hylland Eriksen, *What is Anthropology?* (Pluto Press, 2004) at 158.

[18] It is interesting to note that the science of genetics has long disproved the existence of distinct races as such. Nonetheless, race as a social construction remains important because it tells us how people view themselves and others.

[19] In *ICTR Prosecutor* v. *Akayesu*, Trial Chamber Judgment (2 September 1998), para. 81, the Trial Chamber did make some mention to kinship, arguing that Rwandan society was comprised of eighteen clans whose distinguishing feature was lineage as opposed to ethnicity. Even so, the Tribunal argued, the demarcation line was blurred and people could pass through each clan. The Trial Chamber then went on to discuss the views and considerations not of the local population about their membership but of their colonisers: ibid., at paras. 82–4. This lacks any sound methodology and when later the Chamber was forced to admit that the Genocide Convention does not encompass conduct against members of one's own ethnic or racial group, it had to turn to particular perceptions of the perpetrators and the victims. This *selective anthropology* is misleading and is utilised only in order to serve a particular conclusion. The vast literature on African kinship would have made it abundantly clear that in weakly integrated African nations the operational level of political power is located at the kinship level of the periphery. As a result, *de facto* power based on kinship is usually much stronger than *de jure* power structures. See L. Holy, *Anthropological Perspectives on Kinship* (Pluto Press, 1996).

'loyalty' and 'clan membership', all of which lose their meaning if subject merely to strict legal characterisations.

At yet another dimension, the labours and methods of anthropology assist us in distinguishing between myth and reality and give us a fundamental idea about *mens rea* and *mens rea*-related defences and excuses. D argues that he killed his mother but in fact it could very well have been a distant cousin, simply because his linguistic tradition uses a single word for all females in his lineage. This is pretty clear to him but not to a foreign judge without any anthropological or linguistic insights into D's culture. The Japanese word *aoi*, for example, encompasses what in Europe we conceive as green, blue and pale (as in a pale demeanour), and the Welsh language had until recently similar colour connotations that departed from those employed by their English neighbours.[20] Later on we shall examine the mythology and symbolism of cannibalism in Sierra Leone and the limitations of language therein, but it is instructive at this point to emphasise that what are otherwise rather straightforward notions, which cannot under any circumstances possess a third (grey) meaning, are in fact diffuse and ambiguous to other cultures. In a landmark study of the 1920s, Rivers examined the Melanesian people of the Solomon Islands. What is particularly striking is the use of the local word *mate* which translates as 'dead' but also 'very sick' and 'very elderly'. Clearly, this is not in accord with our strict distinction between dead and alive. Surely, a person can only be one or the other. Rivers understood this to project a classification, rather than a biological determination, from the point of view of the Melanesians. The very infirm and the very elderly were as good as dead because they could no longer partake in the group's activities and the idea was to draw a dividing line between the *mate* and the *toa* (alive).[21] Under this light, it would have been perfectly acceptable for the Melanesians to eliminate all the *mate* in their midst. However, from the perspective of international criminal justice such an act would not only be reprehensible but would no doubt constitute a crime against humanity. The juristic and ethical problem here is obvious. Is it legitimate to convict someone of conduct undertaken throughout one's lifetime and which constitutes part of his or her culture? I am not here going to entertain a discussion as to whether this

[20] See E. Ardener (ed.), *Social Anthropology and Language* (Tavistock, 1971) at xxiv and xxii.

[21] W. H. R. Rivers, 'The Primitive Conception of Death', (1911–12) 10 *Hibbert Journal* 393, at 406.

anthropological finding is pertinent to excusing the accused from liability (as a defence) or in mitigation of punishment, but the reader certainly understands the implications. I am certainly not defending the contention that an unchecked self-proclaimed cultural relativism is a valid defence to all international crimes.[22] Rather, my desire is to offer a new, or additional, perspective to our understanding and application of international criminal norms through the study of *context*.

Infusing anthropological research methods in international criminal investigations

The principal research method for anthropological research is that of *participant observation* through fieldwork. This requires framing a research question from the outset and identifying a community for observation. Fieldwork is generally constant and in order for someone to undertake a thorough investigation it is evident that significant time periods must be spent living with the observed group, in addition to mastering the group's particular language, if at all possible. It is generally considered that the minimum length of time required is one year. At the end of one's field work, notes and interviews are taken back home and the researcher tries to make sense of them, in light of their particular context, with a view to shedding light on his or her research question. The researcher may, or may not, compare his findings to those offered in respect of other groups, being simply content with the study of the particular group in question.[23]

The problem, of course, for criminal investigations is that tribunals have little time to send out an anthropologist for a year to conduct field research, even if appointed at the same time the prosecutor begins to collect evidence and establish a solid indictment. Experience has shown that this is not an insurmountable problem given that from the time they are established until their first judgment is rendered international

[22] The proponents of such arbitrary cultural relativism have claimed that the recruitment of children in Africa to fight in armed conflicts is largely voluntary and the enlisters do not consider their actions as legally or morally culpable. T. Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge University Press, 2009) at 146–70. See, also, from a socio-legal perspective, I. Bantekas, 'Individual Responsibility and the Application of *Ignoratio Juris Non Excusat* in International Law', (2011) 19 *European Journal of Crime, Criminal Law & Criminal Justice* 85.

[23] For an excellent practical guide, see K. O'Reilly, *Ethnographic Methods* (2nd edn, Routledge, 2012).

criminal tribunals usually require a period of at least three years. This is more than sufficient for a group of anthropologists who are expert in the particular group(s) to undertake thorough field work and come up with concrete findings for the tribunal, or commission, as the case may be.[24] The International Criminal Court (ICC) may well require six months to a year before embarking on solid prosecutions. The more serious methodological concern, however, is that the situation before and after the commission of widespread atrocities will in all likelihood be fundamentally different. Several parameters of culture will necessarily change – although this has not been tested – and previous power structures will have been altered by the disappearance of the perpetrators for fear of revenge or prosecution.

Hence, if any form of participant observation is to take place at all in post-conflict societies this must be undertaken with this context in mind and the framing of very specific research agendas. Fortunately, the vast majority of societies have been studied by anthropologists in one form or another. This is to say that there is a significant body of literature on all social groups, but this does not encompass all their cultural traits and social interactions. Hence, the courts, with the assistance of experts, can readily turn to the existing body of knowledge and decide whether more research is necessary to fill particular gaps that are subsequently identified. No doubt, anthropologists should have access to the abundance of material that is collected by the prosecutor and non-governmental organizations (NGOs) in the course of their investigation, or material gathered in the course of providing assistance to victims and witnesses. Much of this may seem irrelevant, either because it is hearsay, repetitive, biased etc., but even so an expert may be able to detect solid patterns that are linked with existing findings and which are not repudiated by the scholarly community. These observations do not, of

[24] In this chapter and throughout the book the idea is that the offences under consideration are prosecuted by domestic or international criminal tribunals. However, it is not unusual for several serious international offences to be handled by truth commissions, whether UN-based or other. The findings in this chapter are pertinent to the work of these commissions even if they are composed solely of people belonging to the same ethnic group as the perpetrators. It should not be assumed that they have a perfect understanding of their culture. We have already discussed Bourdieu's concept of *doxa*. Anthropologists frequently refer to *homeblindedness* as a methodological limitation. This refers to fieldwork undertaken by someone well-versed in the society under examination, which prevents him from gaining deeper insights because he takes things for granted and looks at them through a distorting lens.

course, suggest that the judges must confer their fact-finding and judicial role to anthropologists, but that they must take cognisance of social relationships with which they are unfamiliar in order to serve both the narrow (dispensing of justice) and broad (history-writing, reconciliation) aims of international criminal justice. A necessary disclaimer should, of course, underlie all interaction between judges and anthropologists; namely, 'publication' confirmation bias. This is essentially a distortion in human information processing where reviewers/editors of books and scientific journals accept for publication papers that support their views while ignoring and discrediting those that do not.[25] This phenomenon is more prevalent in the humanities than in legal scholarship because of the tendency to set up doctrinal 'schools' upon which succeeding scholars base their theoretical and empirical work, and hence tribunals should verify the veracity of their information from multiple sources, if available.

Anthropology as a tool for assessing complex liabilities

At a very basic level and in respect of assessing complex liabilities pertinent to international crimes, such as command responsibility, anthropology can assist us to ascertain those elusive *de facto* indicia that are necessary for constructing authority, power and ultimately effective control. It also allows us to understand whether the 'subordinates' that committed the crimes were under sufficient compulsion or control by their superiors, such that justifies the latter's conviction despite the absence of direct fault. Before we go on, however, it is important to make a significant observation that relates to semantics. If anthropology is viewed as a method by which to draw conclusions pertinent to the fault-liability paradigm or complex liabilities, then this method requires an appropriate language in order to communicate concepts and ideas into the sphere of law.[26] Communication is crucial not only because certain words are not translatable from one language to another, as we have already had the chance to explore, but also because wholesale concepts and ideas themselves are alien from one

[25] J. Mahoney, 'Publication Prejudices: An Experimental Study of Confirmatory Bias in the Peer Review System', (1977) 1 *Cognitive Therapy and Research* 161.

[26] See E. Mertz, 'Language, Law and Social Meanings: Linguistic/Anthropological Contributions to the Study of Law', (1992) 26 *Law & Society Review* 413.

culture to another.[27] The so-called Sapir-Whorf hypothesis, elaborated by the respective anthropologists in the 1930s, suggests that language gives rise to fundamental differences in the respective life-worlds which the various groups inhabit. In their case study, the North American native Hopi language was found to contain few nouns but many verbs, which necessarily connoted action and movement. They concluded from this that the Hopi world was predicated around movement and that it was largely disinterested in objects.[28]

A very poignant example, apart from those already provided in previous sections, is necessary in order to better illustrate the point. In the case against Charles Taylor, a prosecution witnesses named 'ZigZag' Marzah was quite clearly unfamiliar with the Western idiom of remorse and conscience.[29] He also claimed that he was involved in cannibalism of enemy corpses, arguing that this was something expected of all warriors battling on the side of Charles Taylor.[30] Whether or not this statement is true, it certainly stirs a wealth of emotions in the Western psyche and reinforces myths and stereotypes associated with primitive Africa. In fact, anthropological research suggests that cannibalism was historically unknown in human history,[31] or that in any event it was alien in

[27] See M. van Hoecke, *Law as Communication* (Hart, 2002), in which the author's central thesis is that all legal relations are to be understood in terms of dialogue, conversation and communicative processes, rather than as traditional command–obedience structures. Legal anthropologists such a Bohannan argued that Western legal terms and categories should not be employed to study the organisation and order of non-Western societies. He believed that such a methodology prevented a comprehensive understanding of other cultures and argued in favour of using native legal terms whose meaning would become evident within an ethnographic context. P. Bohannan, *Justice and Judgment among the Tiv* (Oxford University Press, 1957). This also leads to the so-called methodological distortion of *ethnocentrism*.

[28] The most contemporary manifestation of the hypothesis is currently known as *linguistic relativity*, which posits that language does have some effect on thought, but this is small as opposed to decisive. See P. Kay and W. Kempton, 'What is the Sapir-Whorf Hypothesis?', (1984) 86 *American Anthropologist* 65.

[29] G. Anders, 'Testifying about Uncivilised Events: Problematic Representations of Africa in the Trial against Charles Taylor', (2011) 24 *Leiden Journal of International Law* 937, at 944–5.

[30] Ibid., at 948–9.

[31] However, for the sake of scientific accuracy it has to be said that a good number of anthropologists reject the claim that cannibalism is just a myth created from prejudice. Works such as that of W. Arens, *The Man-Eating Myth: Anthropology and Anthropophagy* (Oxford University Press, 1980) are reflective of the attitude that rejects cannibalism. More recent forensic research of human bones from an Anasazi pueblo in south-western Colorado reveals that nearly thirty men, women and children were butchered and cooked

contemporary African societies. Anders recalls the *Human Leopards* case investigated by a Special Commission Court set up by British colonial authorities in early twentieth-century Sierra Leone. There, and without any corroborating forensic evidence, the court was convinced that members of a secret society dressing up in leopard skins went about ritual cannibalism. The basic story was described by insider witnesses whose communication with their colonisers must have been agonising, through language that was fraught with significant misunderstanding and symbolism and which was moreover read through two very different socio-cultural perspectives. Anders accurately captures this as follows:

> In Sierra Leone and Liberia, as in many parts of Africa, social relationships and personal development are framed in a rich language of eating and consumption. Initiation into secret societies such as the *poro* is also expressed in an idiom of being eaten or devoured by the bush spirits in order to be reborn as a full member of the community. ... The political sphere, in particular, is conceptualised as a potentially dangerous terrain where powerful people 'eat' each other in order to grow 'big'. This has been famously coined by Bayart as the politics of the belly, who describes the consumption of the State's resources by politicians and bureaucrats. In Sierra Leone, corrupt politicians are referred to as *bobor bele* – literally, guys with a belly eating the State's resources. Therefore, the frequent cannibalism accusations in West Africa must not always be read literally. They should rather be interpreted in terms of a highly symbolic political language and critique of existing injustices [as is the case with Sierra Leone].[32]

To a Western audience it seems implausible that anyone can genuinely confuse symbolism with reality, or, to put it bluntly, confuse actual cannibalism with its metaphors. How can you say one thing and, without intentionally lying, actually mean something completely different? How is it that symbolism can be so easily transformed into action? This is not the time or place to expand fully on these issues but it is widely admitted in the anthropological literature that ideas of witchcraft, spirit possession and shamanistic injunctions had a normative effect on the members of the vast majority of traditional societies.[33] The same is largely true today in the industrialised world with

there around 1100 AD. See T. D. White, *Prehistoric Cannibalism at Mancos 5Mtumr—2346* (Princeton University Press, 1992).

[32] Anders, above note 29, at 956.

[33] See S. Brandes, *Power and Persuasion: Fiestas and Social Control in Rural Mexico* (University of Pennsylvania Press, 1988); H. M. Bergsma, 'Tiv Proverbs as a Means of Social Control', (1970) 40 *Africa: Journal of the International African Institute* 151.

pious members of religious groups. This is no doubt a form of social control. To illustrate the point I shall offer two case studies from the recent past.

A significant part of the Rwandan genocide was predicated on a myth or symbolism reiterated and spread by the Hutu that the Tutsi were cockroaches and inferior beings. Whereas no Hutu would typically act on this myth unilaterally, it was the seed for future events, when animosity was stirred through artificial means and channels; and an illiterate and highly polarised populace was unable to separate myth from reality. Anthropological research on the Rwandan genocide tends to show that one of the principal cultural metaphors in Rwanda, the 'flow', may shed some light on some of the methods for killing and torturing used by the Hutu. 'Flow' in general represents something healthy, as is the case with our blood stream or the transformation of food into faeces and insemination into childbirth. Blockage of 'flow' is associated with disease and death. The impalement of victims from the anus to the mouth as well as mass killings at check points, in addition to other motives, symbolises the end of 'flow'.[34] To a Western audience it may to some degree explain certain acts of sheer cruelty (although certainly not fully), as well as demonstrate the existence of genocidal patterns amounting to *systematic*.

The second example is very similar, despite the fact that it took place more than fifty years earlier and fuelled the psyche of a much more literate and 'civilised' population. I am referring to Nazi propaganda, well prior to the commencement of World War II in 1939, through a process of dehumanising its enemies, such as Slavs, communists and Jews. In a world where international travel was exceptional and propaganda had crept into every aspect of social life (school, private clubs, censoring of all publications and broadcasts) it did not take long for the Nazi party to cast doubt in the minds of the German population about the humanity of other races and peoples. This dehumanisation was nothing more than myth-creation, as also was the case for the superiority of the Arians.[35] However, it is well known that such myths occupy a significant place in the collective consciousness of a nation, which is susceptible to manipulation for committing crimes

[34] C. C. Taylor, 'The Cultural Face of Terror in the Rwandan Genocide', in A. L. Hinton (ed.), *Annihilating Difference: The Anthropology of Genocide* (University of California Press, 2002) at 137–78.

[35] D. J. Goldhagan, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (Alfred Knopf, 1996).

against class enemies[36] or in order to achieve less 'innocuous' political objectives.[37]

In the context of the ICTR's investigation, legal anthropology necessarily turned out to play a significant part in the reconstruction of liability for genocide, albeit largely unbeknown to the judges. It will be recalled that in its first case, that of Jean Paul Akayesu, the Tribunal was reluctant to apply the exact terms of Article II of the Genocide Convention, which required that the crime could only be committed against members of another ethnic, national, religious or racial group. Forensic evidence demonstrated that the Hutu and the Tutsi were not ethnically or racially distinct; quite the opposite. Their respective 'ethnic' designations had been engineered by their Belgian colonisers and these had subsequently matured into distinctions of class or social status. The Tribunal therefore turned to what it might have perceived as legal anthropology in order to construct a more objective theory of victimhood for the purposes of the Genocide Convention. It held that beyond external characteristics such as race and ethnic origin, membership of a group may also come about by the personal belief of a group's members as to their distinctiveness.[38] Thus far it is at par with the fundamental tenets of social anthropology. However, this personal self-distinction and self-categorisation is sanctioned only if it is perceived as such by the group under consideration itself (informants), not external observers. The Tribunal offered no prior study, nor one commissioned by itself, that would have shown the views of the informants. This demonstrates that international criminal tribunals perceive extra-legal matters as common knowledge, not worthy of further scientific research, upon which a reasonable man is well suited to reach a reasonable conclusion.

This is, no doubt, a convenient mechanism by which to construct group characteristics in an artificial rather than a social science manner.

[36] See C. C. Wang, *Words Kill: Calling for the Destruction of Class Enemies in China, 1949–1953* (Routledge, 2004).

[37] An interesting, highly critical, insight is offered by Chomsky, on the imagery employed in liberal nations to achieve pre-ordained social and political goals by elites. N. Chomsky, *Necessary Illusions: Thought Control in Democratic Societies* (South End Press, 1989).

[38] *ICTR Prosecutor* v. *Akayesu*, Trial Chamber Judgment (2 September 1998), para. 702. In *ICC Prosecutor* v. *Al-Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Al-Bashir (4 March 2009), para. 137, an ICC Pre-Trial Chamber claimed that three Sudanese tribal groups living in the same area, namely the Fur, the Masalit and the Zaghawa, constituted distinct ethnic groups because each possessed its own language, tribal customs and traditional links to its lands. Without realising it, the Pre-Trial Chamber made an anthropological observation with legal significance.

Its foundation is hardly scientific but is based on the judges' efforts to fit the groups, and members thereof, under discussion within the terms of the Genocide Convention and other forms of criminal liability. Whether or not the Tribunal's assessment of collective identity would withstand thorough anthropological research is a different issue altogether. It is therefore critical that when foreign judges assess the criminal liability of persons from cultures they know little about the assistance of a team of anthropologists, experts in the peoples in question, be sought. The objective of the experts must be to map the various social interactions and institutions of the pertinent people so as to provide a guide as to what is acceptable in the community, distinguish myth and symbolism from reality and apprise the Tribunal of those cultural factors that may inhibit witnesses and victims from testifying. This will no doubt assist the prosecutor and the defence in asking the right questions and thus save precious judicial time.

Obedience and effective control in social culture: understanding leadership and command in army and rebel outfits

One of the key issues in war crimes trials is the degree to which a subordinate would obey a superior order not as a matter of military compulsion but as a matter of ingrained culture. An assessment of such culture, as well as class or similar social constructs, is important because it signifies the degree to which one may assume effective control in respect of jungle-based armies and militias and thus provide an understanding of the structure of hierarchical systems and their distinct organisation. This is by no means a new theme, given that it has troubled law-makers and courts since complex liabilities, such as command responsibility, were first punctuated on the legal map with the *Yamashita* case.[39] There, it was controversially held that Yamashita retained effective control over Japanese troops that went on the rampage against civilians in Manila, even though he had split the Japanese forces in the Philippines into four distinct groups, with all communication between them having been severed by their adversaries. The Tribunal maintained that the atrocities were so widespread that Yamashita must have known about them and could have prevented them, despite the argument of the accused that he had given strict instructions to the

[39] *Trial of General Tomoyuki Yamashita*, 4 Law Reports of Trials of War Criminals 1.

Manila-based commander to evacuate the island and return to Japan. Clearly, in the absence of any direct orders the Tribunal could not have constructed Yamashita's command liability had it not arbitrarily assumed that he enjoyed effective control of all Japanese forces on the island.

Whatever the actual facts on the ground, a retrospective examination of effective control would no doubt be illumined by reference to anthropological data. Again, it is not my intention to go into any significant detail, but given that the case hung on whether Yamashita's subordinates had in fact disobeyed his orders to evacuate and avoid harming civilians, it is worth investigating Japanese military culture at the time. With the adoption of *Shinto* as the country's official State religion in 1890, an Emperor cult was established whereby the Emperor's divinity was based on his descent from the Goddess *Amaterasu*. This meant that the Emperor's commands, and by implication those of his representatives, were to be obeyed without objection. This unswerving loyalty to the Emperor as the basis of the Japanese State (known as *kokutai*, which may be translated manifold, particularly 'sovereign' or 'national essence') had earlier been institutionalised by the introduction of universal conscription, which resulted in the indoctrination of the country's youth and which continued through subsequent generations.[40] This cultural dimension, coupled undoubtedly with fear and other elements, accounts for the acceptance of brutality within the ranks of the Japanese army and its members' 'loyalty-to-the-death'. As a result, it would have been characteristically untypical and out of all logic for the forces under Yamashita's *de jure* command to disobey their commander's direct orders. By logical implication, no distinction can be made between *de jure* and *de facto* command in respect of the Japanese military organisation during World War II because, even if separated from their commanders, units and subunits would always religiously adhere to their superiors' original orders – unless, of course, there were other available orders. This observation also suggests that in this particular socio-military context the absence of material capacity to prevent or punish is irrelevant in establishing *de*

[40] In fact, *kokutai* was introduced as a fundamental building block in Article 4 of Japan's 1890 Constitution, also known as the Meiji Constitution, on account of the Tenno dynasty which assumed power through the 1868 Meiji restoration, remaining in power until 1945. See G. M. Beckmann, *The Making of the Meiji Constitution: The Oligarchs and the Constitutional Development of Japan, 1868–1891* (University of Kansas Press, 1957).

facto or *de jure* command because the conduct of subordinates is uniform irrespective of the person under command.

In the Rwanda conflict, *de facto* command and control became a central issue because, unlike the military-styled paramilitary groups on the territory of the former Yugoslavia, a significant amount of authority was exercised on the basis of traditional socio-economic structures. Rwandan society, like most of Africa, is tribal and class-based, with authority and privileges typically belonging to the elite in each tribe or clan.[41] As a result, authority and wealth go hand-in-hand, with the elite also being the richest and better educated among the tribe. Until the creation of the ICTR the construction of command responsibility had been applied to regular armies and, at worst, to tightly structured paramilitary units, which, however, resembled regular armies principally because they were formed and run by ex-military personnel, as was the case with indictments before the ICTY. The most complex cases had been those dealt with by subsequent World War II military tribunals in respect of civilians, particularly industrial and political leaders.[42]

The ICTR paid particular attention to these distinct anthropological features in its construction of hierarchies and authority in Rwandan society, although admittedly inadvertently and without the requisite methodological or scientific rigour. In the *Akayesu* case the accused was the burgomaster of Taba commune, a position akin to that of mayor in Western parlance. Whereas Western mayors enjoy no other authority than to enact peripheral by-laws and set the municipality's economic agenda on the basis of municipal taxes and other income, in Rwanda the burgomaster enjoyed far greater authority.[43] His powers were found to be much wider than his *de jure* authority.[44] In fact, he was perceived as the

[41] For an excellent anthropological account, see R. Lemarchand, 'Power and Stratification in Rwanda: A Reconsideration', (1996) 6 *Cahiers d'études Africaines* 592.

[42] See *Government Commissioner of the General Tribunal of the Military Government for the French Zone of Occupation in Germany* v. *Roechling* 14 Trials of War Criminals before the Nuremberg Military Tribunals (Trials) 1097; *USA* v. *Flick* 6 Trials 1187; and *USA* v. *von Weizsaecker* (*Ministries* case) 14 Trials 308. Once again, although no direct anthropological questions were asked by these tribunals, it was deemed implicit that those to whom powers were delegated by the Nazi regime enjoyed sufficient control over persons committing particular crimes. This was a direct consequence of Nazi culture, which permeated all elements of the Reich's socio-economic *raison d'être*.

[43] This is confirmed by the vast literature in respect of weakly integrated nations where the real power lies with powerful individuals in the periphery. See J. Gledhill, *Power and its Disguises: Anthropological Perspectives on Politics* (Pluto Press, 1994).

[44] *Akayesu* Trial judgment, above note 38, para. 57.

'father' of the people, whose every order was to be obeyed without question or deviation.[45] Clearly, informal law and power arrangements, whether explicit or implicit, played an important role in ascertaining the enjoyment of effective control over the actions of civilian populations acting as mobs, random groups or under a self-perceived identity. The existence of such effective control is further reinforced by class and education. This African case study exemplifies the Tribunal's desire to construct (or expand) complex liabilities on the basis of anthropological observations in order to reach a just conclusion; in the case at hand to establish the liability of an influential figure urging those under his circle of influence to commit genocide.

The role and origin of *influence* in Sierra Leone's armed groups

We have already made extensive reference to myth and symbolism in the popular culture of Sierra Leonean society. The Sierra Leone Special Court (SLSC) has only indirectly examined the anthropological dimension of the various armed groups and its relevance to our understanding of conduct and hierarchies. With respect to the latter, the jurisprudence of the SLSC has revealed two broad types of military authority. The first is consistent with that found in regular armies and rebel forces, on the basis of a strict or not so strict hierarchical structure. This seems to be the case with the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). The second type of authority depends less on formal hierarchies and is instead entrenched in symbolism and mythology. This much is true with respect to the *Kamajors* and their Civil Defence Forces (CDF). No doubt, elements of both types of authority are found in all groups in one form or another.

That mythology, mysticism and symbolism played a role in the military organisation of Sierra Leone's factions comes as no surprise, as was revealed earlier in this chapter. This was further facilitated by the fact that, although the country is host to twenty African groups (the largest of which are the *Temne* and *Mende*), it is multi-religious and the war did not start along ethnic or religious lines. Rebel groups and militias were thus ethnically and religiously diverse, a phenomenon already reflected in membership of the country's secret societies, particularly the *poro* and the *bondo*. Exceptionally, the composition of the *Kamajors* was *Mende*-

[45] Ibid., paras. 55, 74.

based, albeit their aim was not necessarily to engage in inter-ethnic rivalries.[46] That the SLSC made a serious effort to explain the mythology and mysticism underlying the organisation of the *Kamajors* is evidence of the fact that social phenomena are of acute relevance in ascribing the attributes of authority in order to construct complex liabilities. It will be recalled that the ICTY largely rejected or, at least, ignored such factors on the assumption that factions on the territory of Bosnia were neatly divided along ethnic/religious lines and, as a result, there was no need to enquire into other shared traits between members of the groups.

I will draw on one element here that is intriguing and which, although rejected by the ICTY, should have found a place in the jurisprudence of the SLSC. I am referring to the power or authority to 'influence' as an indication or evidence of effective control. Indeed, in the *Čelebići* case the accused Delalič was found to be a highly influential figure in the Bosnian army. He would possess authority to sign contracts and release orders in a prisoner-of-war (POW) camp and to liaise with the highest echelons of the Bosnian Muslim authorities; yet, he did not possess formal authority over other subordinates, especially those in the POW camp. The Tribunal did not consider that this highly influential individual, in the absence of any direct subordinates, yielded sufficient control over those running the POW camp such as would have allowed him to intervene in the commission of crimes against the prisoners.[47] This conclusion was drawn at a time when the construction of the complex liability of command responsibility did not warrant open-ended expansion. It was enough for the Tribunal that only persons exercising effective control over subordinates were subject to the doctrine. The Tribunal rightly felt that if everyone yielding influence could also be encompassed the floodgates would be open to convict persons who were not at fault.[48] The key word here is *fault*. If D, a boy-scout leader, has exerted and continues to exert significant influence over a group of boy scouts who are recruited as

[46] K. Dupuy and H. M. Binningsbø, *Power-Sharing and Peace-Building in Sierra Leone* (CSCW Papers, 2007) at 3–4.

[47] *ICTY Prosecutor* v. *Delalić et al.* (*Čelebići* case), Trial Chamber judgment (16 November 1998), paras. 266, 653–6.

[48] This is particularly reflected in its pronouncements in *ICTY Prosecutor* v. *Brdjanin and Talić*, Trial Chamber Judgment (1 September 2004) paras. 276, 281; *ICTY Prosecutor* v. *Naletilić and Martinović*, Trial Chamber Judgment (21 March 2003), para. 68. These judgments certainly influenced the decision of the State Court of Bosnia and Herzegovina in *Prosecutor* v. *Alić*, Trial Chamber Judgment, Case No X-KR-06/294 (11 April 2008) at 46.

minors by a rebel group, it cannot be seriously claimed that he possesses sufficient control over all their future actions, particularly when they are spatially and geographically removed from him. D clearly lacks fault for failing to use his powers of influence to dissuade the youths. However, if D was in proximity to the minors and was an influential figure in the broader echelons of the group, he possesses the material capacity to employ his influence over the minors, even if he does not enjoy effective control by reason of direct subordination. In this latter scenario D is at material fault, although it will depend on the particular circumstances as to whether this fault may substantiate command responsibility or other types of complex liabilities. These particular circumstances are none other than D's material capacity to act.[49] It defies logic and the dictates of justice to assert that a person with the direct capacity to save hundreds of lives by simply averting the would-be perpetrators bears no liability simply because he was not incumbent with a pre-existing duty to act. This is not merely an iteration or transplantation of the duty to save strangers typically associated with civil law jurisdictions. It goes at the very heart of material fault and all that it stands for.

It is not clear whether the SLSC shares this conviction, given that it has not expressly rejected or upheld this thesis.[50] It is certain that the SLSC was unaware of the scholarly literature suggesting that power of influence is possible even in the absence of authority over one's target audience.[51] Imagine if influence and authority are merged into a single entity. Had the Special Court been cognisant of these arguments it might have taken up the proposition that in situations where the power relations and social status between several individuals is chaotic, direct subordination is not necessary in order for the more influential person to establish effective control merely by his or her powers of influence.[52] This chaotic power

[49] This is why Mettraux sides with the judgments of the ICTY to reject influence as establishing *de facto* control. See G. Mettraux, *The Law of Command Responsibility* (Oxford University Press, 2009) at 183 ff.

[50] In *SLSC Prosecutor* v. *Brima, Kanaru and Kanu*, Judgment (20 June 2007), para. 788, the SLSC referred to a number of indicia as evidence of effective control. These may implicitly be read – although one could argue otherwise – as encompassing cases of significant and overpowering influence.

[51] See L. A. Hill, *Exercising Influence without Formal Authority: How New Managers can Build Power and Influence* (Harvard Business Press, 2008); A. R. Cohen and D. L. Bradford, *Influence without Authority* (Wiley, 2005). Hill's motto, a pioneer on this topic, is that: 'all influential managers have power but not all powerful managers have influence'.

[52] *Influence* is probably not the appropriate term here and this certainly explains why the ad hoc tribunals have rejected influence-based effective control out of hand. It should be

gap certainly existed in the context of the military factions engaged in Sierra Leone's bloody wars. The spiritual leader of the *Kamajors*, Kondewa, is an interesting case study. The *Kamajors* were originally organised as a group of *Mende* hunters who responded to the directives of their various chiefs to protect people from the rebels.[53] As a result, its members did not possess the military skills and discipline of a regular or rebel army. They were in need of organisation and guidance in order to become an organised fighting unit.[54] This guidance came both from military as well as spiritual leaders. Kondewa was of the latter kind:

> He was the head of all the CDF initiators initiating the *Kamajors* into the *Kamajor* society in Sierra Leone. His job was to prepare herbs which the *Kamajors* smeared on their bodies to protect them against bullets. Kondewa was not a fighter, he himself never went to the war front or into active combat, but whenever a *Kamajor* was going to war, he would go to Kondewa for advice and blessing. ... The *Kamajors* believed in the mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them bullet-proof. The *Kamajors* looked up to Kondewa and admired the man with such powers. ... Because of the mystical powers Kondewa possessed, he had command over the *Kamajors* from every part of the country.[55]

The Special Court opined that Kondewa's mystical powers did not automatically confer upon him military authority over the recruits and their operations.[56] On the contrary, it was his *de jure* position of High Priest of the CDF that granted him some degree of effective control in certain situations and it was in respect of this that he was found to enjoy effective control.[57]

The SLSC missed a golden opportunity to defy the *Čelebići* myth by expressly stipulating that under certain circumstances the yielding of influence between asymmetric actors can give rise to effective control irrespective of the military, civilian or other context in which it is exercised. If a person can convince another that following a ritual he will be unaffected by his adversaries' weapons, it is absurd to claim that this person does not possess powers akin, if not far superior, to those enjoyed

understood as possessing the material and mental power to compel another to do or abstain from doing something.

[53] *SLSC Prosecutor* v. *Fofana and Kondewa*, Judgment (2 August 2007), para. 354.

[54] Even so, universal discipline remained problematic because some fighters 'acted on their own without knowledge of central command because their area of operation was so wide'. Ibid., para. 358.

[55] Ibid., paras. 344–6. [56] Ibid., para. 806. [57] Ibid., para. 686.

in a superior-subordinate relationship. Such powers of influence are no doubt rare, but in Sierra Leone, where the mystical and the symbolic coincide with the real and the brutal, the anthropological basis of the relevant relationships should have been given much more prominence. Just as the results of one anthropological study cannot be transplanted into another – although some general observations may be possible – in the same manner the findings of the SLSC need not necessarily be accepted as immutable truths applicable in all future conflicts. I am not convinced by the argument that influence can never give rise to effective control-type situations. This position is sustainable, of course, as long as it is proven that the person in question had the material capacity to prevent or punish the crimes committed by those persons over whom he enjoyed significant influence. I can only hope that the jurisprudence will take anthropological evidence into consideration and finally move towards this direction.

Conclusion

As is the case with all the chapters in this book, this chapter is meant to provide a fresh perspective to international criminal justice. The law continues to remain paramount, as does its objectivity, but here the emphasis was placed on understanding the societies where violence occurred, and deciphering the social relations of their people. This is crucial not only for the well-functioning of international criminal tribunals and the correct application of the pertinent law, but also for making the correct policy choices in respect of post-conflict or transitional societies.[58] As far as the latter is concerned, if we are aware of the aspirations of the local population and if it were to be demonstrated that very little, if any, animosity exists between the rival groups, it makes sense to adopt a policy that reinforces a combination of domestic criminal justice and physical reconstruction rather than place all resources and energy upon a single international criminal justice mechanism. Equally, our comprehension of social and cultural relations and the causes behind a conflict provides a tribunal with the necessary tools to

[58] Numerous anthropologists suggest that female genital mutilation (FGM), for example, is best tackled through non-legal means, not only because enforcement institutions are weak but also because the persistence of FGM is based on the lack of empowerment and hostile customary attitudes. See N. Vitalis-Pemunta, *Human Rights and Socio-Legal Resistance against Female Genital Cutting: An Anthropological Perspective* (Verlag, 2011), who studied the FGM practices of the Ejagham in Cameroon.

assess power relations – through kinship and lineage arrangements – and paint a largely accurate picture of the situation. This in turn may well be the first step towards writing a historical record, which is after all a stated objective of international criminal justice. We have shown in this chapter that anthropology assists not only in supplementary criminal justice goals (i.e., reconciliation, reconstruction and history-writing), but also in primary ones, namely the correct application of international norms.

The ICTY and the ICTR were largely disinclined to employ anthropological data, and this is clearly evident from the introductory sections of their first judgments, where they are content to cite only historical and intelligence sources in order to explain the underlying causes of the conflict. As these judgments went on, however, it was clear that the Tribunals lacked concrete definitions to crucial legal questions, namely whether the Tutsi were racially or ethnically diverse from the Hutu, or whether the real power structure in the communes of Rwanda was in practice much different than that on paper. The ICTR ultimately responded to these questions by inadvertently resorting to anthropological research methods and, although the outcome was satisfactory, the process was poor. The same poor results are encountered in the work of the SLSC, which should have learned from the mistakes of its predecessors and infused a serious anthropological dimension into its adjudicative function. Its inability to distinguish between myth, symbolism and reality in respect of the cannibalism described by some of the witnesses and attested to by some of the alleged perpetrators is a serious impediment to the just application of the law. A person may well be convicted for conduct which when described in one language means one thing but when translated means something completely different.

The recommendation of this author is that although anthropology is not a *sine qua non* condition for the application of international criminal justice, it must nonetheless become an integral part of international investigations. When a tribunal is established, or when the ICC takes on a new situation, it is imperative that a team of experts with particular expertise in the region and peoples under investigation be established with a view to bringing forth existing knowledge and in order to conduct new investigations if necessary. The experts' research tools and findings must guide the tribunals but should never substitute or pre-empt sound judicial determination. In this manner, it is hoped that blind justice will also assist the society under consideration, as well as other societies on the brink of conflict, to assess its distortions and ultimately address them from within.