

2005

Dancing with the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts

David M, Crane

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

Recommended Citation

David M, Crane, *Dancing with the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts*, 37 Case W. Res. J. Int'l L. 1 (2005)

Available at: <https://scholarlycommons.law.case.edu/jil/vol37/iss1/1>

This Speech is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

**DANCING WITH THE DEVIL: PROSECUTING WEST AFRICA'S
WARLORDS: BUILDING INITIAL PROSECUTORIAL STRATEGY FOR AN
INTERNATIONAL TRIBUNAL AFTER THIRD WORLD ARMED CONFLICTS***

David M. Crane[†]

I. Introduction

I want to take this opportunity to thank you all for allowing me to come and address you today about our work of prosecuting West Africa's warlords. It is nice to be home having flown directly from Freetown, Sierra Leone to Cleveland, Ohio. If I nod off in the middle of my speech, before you do, I hope you will understand.

Specifically, I would like to commend the Case Western Reserve University School of Law and the Frederick K. Cox International Law Center, and, in particular, Professor Michael Scharf, for their leadership in the academic community regarding international criminal justice. As a member of our renowned Academic Consortium, this law school has been involved in supporting my office in numerous important legal arguments, resulting in cornerstone rulings by our Appellate Chamber that ranged from head of state immunity, child soldiers, as well as general amnesties, among several other key rulings. If you wish, we can discuss these later during the question and answer period. In my mind these are major decisions that will impact the field of international criminal law for years to come. This law school played an active role. You have made a difference.

Not only has this support been excellent from Cleveland, but you have sent an intern to work with us. Ms. Leslie Murray, a student here, currently is in Freetown working as a trial assistant with our Task Force Two, which is charged with trying the leadership of the Civil Defense Force and the dreaded Kamajors. Leslie has done you all proud as a trial assistant and is found mainly in trial chamber number one supporting our trial counsels in prosecuting these warlords.

I have come to you directly from West Africa, as I have said, to talk to you about what we call "dancing with the devil," taking down some of the worst war criminals in history and how we developed the initial prosecutorial strategy to do just that. These war criminals have, in Sierra Leone alone, caused the murder, rape, maiming, and mutilation of over five hun-

* Speech presented on October 27, 2004 for the Klatsky Seminar in Human Rights in collaboration with the Frederick K. Cox International Law Center of Case Western Reserve University School of Law.

† Prosecutor for the Special Court for Sierra Leone.

dred thousand human beings and displaced over a million more throughout the region. To date we have accounted for most of those who bear the greatest responsibility for these horrors, the result being that we have also exposed and are assisting in breaking up a multi-million dollar diamonds-for-guns joint criminal enterprise. The devils we dance with everyday are not only the criminal actors being prosecuted, but the peripheral players who have been involved in this decade long tragedy. These actors include gun runners, diamond dealers, the Russian and Ukrainian mafia, other international criminal organizations, and terrorists, to include Hezbollah and Al Qaeda. All of them were involved in West Africa taking blood diamonds from the mines of eastern Sierra Leone and trading them for cash to buy weapons to sustain the conflicts throughout the region or international terrorism. West Africa was a lawless land where accountability was nonexistent. The rule of the gun reigned supreme.

Before we go any further into my talk regarding the building of an initial prosecutorial strategy in war torn regions of the third world, such as in Sierra Leone, let me give you a brief overview about the Special Court, the world's first hybrid international war crimes tribunal.

II. The Special Court for Sierra Leone

The Special Court for Sierra Leone (the Court) is a bold new experiment, set up to test whether international criminal justice can be efficiently and effectively delivered within general time frames and budget. This we are doing.

Like all international tribunals, in general, the Court is a creature of political compromise. The Court's mandate is to prosecute those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law that took place in Sierra Leone since November, 1996. The operative political phrase is "greatest responsibility" and the specificity inherent in these words is a reason why this Court will largely succeed. It is a mandate we can accomplish within those budgetary and time constraints.

A little over four years ago the government of the Republic of Sierra Leone requested the Secretary General of the United Nations, Kofi Annan, to assist the country in setting up a mechanism to account for the horrible crimes perpetrated upon the people of Sierra Leone. In August of 2000, the Security Council authorized the Secretary General to set up a tribunal and to begin exploring the methods by which this would be accomplished. After numerous months of discussions, the hybrid international war crimes tribunal concept was created and in January of 2002, the Court formally came into existence by an international agreement signed in Freetown.

The Court has three statutory organs, the Office of the Prosecutor, headed by a Prosecutor appointed by the Secretary General; an Office of the Registrar, led by the Registrar, also appointed by the Secretary General; and

the Chambers consisting of an appellate chamber and two trial chambers. The Judges are appointed largely by the Secretary General. One judge in each trial chamber and two judges in the Appellate Chamber are appointed by the Government of Sierra Leone. The Deputy Prosecutor is also appointed by the government. This then is the hybrid nature of this international tribunal. Since its creation, the Registrar has established the Public Defender's office headed by the Principle Defender, an administrator within the Registrar's office. We consider that a fourth organ of the Court. That office is charged with initial representation of indictees and in supporting the various defense teams logistically. All defense counsel have the same equipment, tools, and office space as other members of the Court. We believe in the concept of equality of arms.

I was appointed the Prosecutor in April of 2002 and arrived in Freetown just after the Registrar, on 6 August of that same year. According to plan we began our investigations within two weeks of that arrival and on 3 March 2003, I signed eight indictments, and arrested six of the eight indictees in a text book, fifty-five minute arrest operation, called Operation Justice on 10 March 2003.

We now have indicted thirteen persons who allegedly bear the greatest responsibility. Two have since died, both in 2003, Fodoy Sankoh of natural causes while in our custody and Samuel "the Maskita" Bockerie, murdered by Charles Taylor. Nine of the remaining eleven are currently in detention. Their charges are joined into three indictments, the leadership of the Civil Defense Force (CDF), the Revolutionary United Front (RUF), and the Armed Forces Revolutionary Council (AFRC) respectively. Two indictees remain at large, Johnny Paul Koroma whose whereabouts is unknown and Charles Taylor in political limbo in Calabar, Nigeria.

On 3 June 2004, I stepped up to the podium and opened the first criminal trial against the leadership of the Civil Defense Force, and on 5 July 2004, the criminal trial against the Revolutionary United Front. Currently we are presenting our case in chief against these indictees. Upon the appointment of the second trial chamber this Fall, we expect to open up the criminal case against the leadership of the Armed Forces Revolutionary Council after the holiday adjournment. The trials will inevitably take us into our fourth year of 2006.

III. Third World Conflicts in General-The Future

In the dark corners of the world lurks the future of armed conflict. Gone are the days of industrial age armies throwing ordnance at each other until a military advantage is gained and a victory won. Certainly gone is the possibility of a global standoff by neutralized superpowers, each attempting to win a never ending chess game. The oft glamorized world of star wars and warfare by computer seem to be, in retrospect, interesting adjuncts to the ending Cold War. Today, there is such a vast disparity in technology

among the first and third world, that the advantage of occupying the information high ground by certain countries neutralizes the concept of information warfare as a viable weapon in and of itself.

The real threat to humanity on several levels is bred in the fields of lawlessness in the third world. Fertilized by greed and corruption, what grows out of these regions of the world are terror, war crimes, and crimes against humanity.

Conflicts in these dark corners are evolving into uncivilized events. They appear to be less political and are more criminal in origin and scope. Combatants lost in this dismal swamp become mere pawns in a deadly joint criminal enterprise started by actors for their own personal criminal gain. Respect for the law of armed conflict decreases or disappears entirely in this new type of warfare as the involvement of the criminal element increases.

These third world conflicts have become less national and more regional in scope. Borders and boundaries are less in dispute and certainly do not deter movement of combatants, contraband, and refugees. The combatants have increasingly become criminals. The key players involved are not state but often non-state actors. These dark corners become havens for these criminal elements. They live in a world of conflict that is brutal and certainly non-traditional in character.

The catalyst for this type of non-traditional conflict is impunity and corruption. The impunity by which these warlords move about a region unmolested, or with little accountability, breeds a lack of respect by the populace for the rule of law. The corruption so endemic in these societies fosters a healthy lack of respect for institutions of any kind, certainly a wary distrust. Louis Brandeis stated succinctly in 1912, "If we desire respect for the law we must first make the law respectable."¹ This lack of respect for the law and for institutions becomes a powder keg which any warlord in the region can ignite for their own personal criminal advantage and gain. The motives are simply for control of the region, the power that it grants, satisfying the greed that drives one to do these deeds.

As stated earlier, the result is a conflict where war crimes and crimes against humanity rear their ugly heads. Most vulnerable in these conflicts are non-combatants who are protected by the laws of armed conflict. Women and children are particularly singled out by the warring factions, resulting in horrors that defy a language to describe. The international community is forced to react and, in some rare instances, to create an international tribunal to prosecute those who allegedly committed international crimes.

¹ LOUIS D. BRANDEIS, *THE BRANDEIS GUIDE TO THE MODERN WORLD* 166 (Alfred Lief ed., 1941).

IV. Developing a Prosecutorial Strategy

A successful initial prosecutorial strategy, once that tribunal establishment decision is made, stems from a mandate that can be accomplished within the political expectations of a reluctant international community. An overly broad mandate, with language that is subject to interpretation, can create a foundation for a tribunal that is built on sand. In my mind, the more vague the mandate, the more chance there is for frustration and even failure.

In Sierra Leone, the international community got the mandate right. The Secretary General handed me a workable mandate, one that can be reasonably accomplished within the timeframes and budget contemplated. A tribunal should not be in country longer than five years or it becomes a distraction and not a catalyst for a sustainable peace. A specific mandate avoids that problem.

Additionally, the standard for international prosecutions should be “greatest responsibility”. That is the clear standard I was given to prosecute these warlords. If that phrase in the mandate of “greatest responsibility” was not included in the agreement, this hybrid international war crimes tribunal would not exist. You must create tribunals and build a strategy in the real world, taking into consideration the wariness that the international community has for broad, seemingly endless war crimes prosecutions.

Another point of focus is the importance of keeping in mind the true purpose of the tribunal. That purpose is that the tribunal is set up for the victims, their families, towns, and districts. At the end of the day they are the ones who will have to live with the result and to try to put their destroyed lives back together in some small semblance of order. A tribunal that loses that focus will drift into history under a very dark cloud indeed. That is why in the future tribunals need to be where the horrors took place, in the middle of the crime scene. The people need to see their tribunal in action.

So with this by way of background, how does one develop an initial prosecutorial strategy in the midst of what is most likely a boiling cauldron of pain, suffering, political chaos, and failed institutions propped up by international assistance?

The first point to consider is to build your prosecution and support teams around the general strategy that must be developed before deployment. The simple point here is to build your office around your strategy, not your strategy around your office. This allows for the efficient hiring of an Office of the Prosecutor that fits the mandate. It eliminates what I call an endemic “hall walkers” syndrome found in some international organizations. Instead of an OTP of several hundred, the OTP in Sierra Leone is less than seventy persons, including secondees and interns.

That initial prosecutorial strategy must be planned out as far in advance as appropriate. My strategy was developed over the initial two months after

I was appointed, in timed phases from pre-deployment, in the Spring of 2002, out to trial in 2003 or early 2004. In effect, we literally followed “the bouncing ball” as we proceeded towards trial. Though the trials started four months later than I would have wanted, we largely stuck to our strategy with little deviation. For a hybrid tribunal such as the Special Court, with limited resources and time, a general strategy with milestones is very useful.

Secondly, we time phased our movement into country. We started to put our support system in first, followed by the investigators and then trial counsel. Before deployment we attempted to develop a good information management system that had the ability and ruggedness to be moved and to exist in an extreme environment. Looking back at the dozens upon dozens of actions required to set up the OTP, we got hoodwinked in buying an information management system we did not need and ended up with the Case Map system similar to the one in use by the ICTY in the Hague. However, at the time this system was unavailable to us.

Thirdly, as you develop and then execute your strategy, it is important to understand the internal players, or what I call the domestic situational dynamics. I discovered that developing the initial strategy and executing it in the third world is only about thirty percent law related. A vast majority of the dynamics are political, diplomatic, as well as cultural. The internal players in a deployed situation, are not only the combatants involved in the conflict, but the current government; the United Nations family there, to include a peacekeeping force; non-governmental organizations; civil society; and, most importantly, your client, in my case, the people of Sierra Leone.

One of my many “firsts” in the fall of 2002, was to meet our client and to hear what they had to say about the tragedy that befell them over that past decade. In town hall meetings throughout Sierra Leone, I listened to citizens from all walks of life tell me what happened. I began to feel, taste, touch, smell, and see what took place. In turn, the people of Sierra Leone got to see their prosecutor and to begin to understand my strong belief in being completely independent from outside influence, a big concern for them; and to discuss what the Court was all about. For the first four months I literally travelled the countryside, visiting every district and every major town. I came away with a much deeper appreciation of how a total lack of the rule of law can turn a whole society upside down. Benjamin Franklin stated simply in his *Poor Richard's Almanac*, 1755: “Where there is Hunger, Law is not regarded; and where Law is not regarded, there will be Hunger.”² The stories of what took place told by the maimed and the mutilated will haunt me for the rest of my life.

Fourthly, it is submitted, no tribunal can, and in particular an OTP, operate without understanding the international dimension that is over laid the

² 5 BENJAMIN FRANKLIN, *Poor Richard's Almanac*, in *THE PAPERS OF BENJAMIN FRANKLIN* 472 (Leonard W. Larbaree ed., 1962).

internal dynamics regarding the criminal case. Highlighted earlier in my general introduction one must appreciate that rarely do these conflicts involve combatants alone. External players consist of States, international criminal cartels, possibly corporations, terrorists, and heads of government acting in their personal capacity in a type of joint criminal enterprise. It is a half measure to investigate internally without an understanding of the external international dynamic and the role it played in the internal armed conflict in question.

Intertwined throughout the international, and to some extent the domestic dynamic, is the reluctance to insert international justice into international politics, particularly when it relates to heads of government or State. Justice often upsets the political and diplomatic applecart. The blow back of this can be subtle and in some cases outright obstruction of bringing all of the external players to justice pursuant to an internationally constructed mandate. This can lead to odd and frustrating results, particularly for the people of the region. The West African situation is again illustrative of this. With the concurrence of the United Nations and other states, Nigeria currently harbours the indicted war criminal, former President Charles Taylor, yet sits on our Management Committee which oversees the Court's administration on behalf of the United Nations. The conflict of interest is obvious and makes it difficult to tell the people of Sierra Leone that the law is fair and that no one is above the law.

V. The Role of the Prosecutor

In executing the initial prosecutorial strategy, the role of the Prosecutor, while located in-country, takes on aspects that can assist in transitioning the region into a just peace. This role is not just tackling the root causes of the conflict, impunity or corruption, but something more. It is a naïve prosecutor who comes into a third world country focused only on the law.

To be an effective international prosecutor, one does not only have to develop a strategy that accomplishes the mandate of the Court, but that prosecutor must be a catalyst for positive change. In some ways it is being a role model. In other ways, it is setting a new standard in judicial effectiveness that begins to establish a respect for legal institutions.

This role, which will assist in the execution of the initial prosecution plan, is threefold: legacy builder, facilitator, and trainer.

Part of any good prosecutorial plan is not only understanding the mandate, but also having a sense of what the Court should leave behind for the citizenry. A legacy program is important to assist in the continued development of a renewed respect for the rule of law. Though the Special Court does not have a capacity for management of a national program, we are building our legacy in the best way we can.

The Court will leave all of its physical plant at our New England site on Jomo Kenyatta Road in Freetown--the courthouse, the buildings, the

furniture, the office equipment-- to the people of Sierra Leone. The campus, build by Sierra Leoneans, is a shining example of the dedication of these brave people towards peace and it is hoped that the compound will remain a judicial facility.

Additionally, the Court will leave a cadre of trained Sierra Leoneans in numerous professions and trades. These lawyers, investigators, court administrators, case managers, witness protection managers, personnel and financial specialists, as well as physical plant technicians will stay and begin rebuilding the capacity of the judiciary to once again administer the law throughout the country. They will undoubtedly begin to train a new generation of legal specialists and support personnel.

Our outreach program assists in legacy building by teaching the importance of the rule of the law and facilitating modalities and opportunities for discussion of the role of the law in fostering an open and peaceful society. Through conferences, talk shows, interviews, town hall meetings, and classes the Court makes itself available to the people of the region to discuss progress of the Court, answer questions, listen to concerns, and explain ways the Court is assisting Sierra Leone in transitioning into a peaceful and stable country. The Court interfaces with all levels of society from the national government, trade unions, local NGO's, the print media, the television and radio stations, the local bar association, and academia to include various schools from primary all the way up to universities.

Another aspect of leaving a legacy with Sierra Leone is to facilitate the coordination of international organizations interested in helping to rebuild the judiciary with other actors in-country who can advise them in developing useful and relevant projects. In our travels, the Registrar and I frequently review with organizations ways they can help and refer them to our Outreach Program Coordinator or other non-Court institutions who can assist in marrying them up with the right groups.

VI. Conclusion

In conclusion, in order to successfully execute the initial prosecutorial plan, a prosecutor must be visible, focused, situationally aware, and flexible. That prosecutor operates daily in a legal, diplomatic, political, and real world. The decisions made affect not only the prosecutorial strategy, but the very security of the region. Setting foot onto the soil of a region that has never really known the rule of the law, governed, influenced, and abused by warlords and other criminal actors for decades, requires a deft ability to implement a prosecution strategy that preserves peace—not destroys it. In West Africa I had to get it right from the very beginning. Mistakes could cost lives and disrupt the transition process from conflict to peace. However, at the end of the day, the citizens of a war torn region must come to understand three things related to the law, that it is fair, that no one is above it, and that the rule of law is far more powerful than the rule of the gun. I

will leave you with a quote from another American Chief Prosecutor, Robert Jackson, at Nuremberg in his opening statement, 21 November 1945:

*“The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.”*³

³ Opening statement by Robert H. Jackson, Chief Prosecutor for the United States, before the International Military Tribunal, Nuremberg, Germany (Nov. 21, 1945) in *United States v. Göring*, cited in *2 Trial of the Major War Criminals Before the International Military Tribunal* 98, 147 (1946).

