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Failures of International Law and Human Rights Institutions: Palestine, Syria and Iraq in 2014

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The United States' bombing of Syria and Iraq since mid-September 2014 and the Israeli onslaught on Gaza in July and August 2014 show once again the extreme weakness of International Law and International Human Rights organisations in deterring, punishing these illegal wars of aggression or in finding mediated solutions. Neither International Courts nor United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict offer any realistic solutions. Moreover, we've just learned that the International Criminal Court will not investigate the Israeli attack on the Gaza Flotilla in 2010 that left ten people on the Flotilla dead.

Syria, Iraq and Afghanistan

Since early 2011, Syria has been the victim of a massive invasion by diverse Islamic terrorist organisations, western proxy organisations—"mercenaries" according to Mother Agnès-Mariam de la Croix of Syria—supported and financed by the United States, Britain, France, Turkey, Saudi Arabia and Qatar. Bombing civilian targets, terrorising and murdering civilians—including beheading—has been the order of the day. About 200,000 have died and there are almost 2.5 million refugees in countries surrounding Syria. These crimes committed against the Syrian people should be punished but there is no viable mechanism or political will available.

The Prosecutor of the International Criminal Court, Fatou Bensouda has turned a blind eye to the sufferings of Syria and the Syrian people when she could have acted. The United States, Saudi Arabia, Qatar and Turkey benefit from total legal impunity since they are not bound by the Rome Statute. But all is not lost since the Rome Statute binds Great Britain and France. Their leaders can be charged for aiding and abetting crimes committed in Syria by the Free Syrian Army and the multitude of Jihadists carrying out atrocities. Charles Taylor, former President of Liberia, is serving a 75-year sentence imposed by the Special Court for Sierra Leone for aiding crimes committed by insurgents in Sierra Leone. The Prosecutor of the ICC does not even need a formal complaint to begin. The Prosecutor can take the initiative by petitioning the Court for leave to lay charges against François Hollande and David Cameron and/or other political or military leaders. The Prosecutor took this initiative with respect to the purely internal dispute arising as a result of the Kenyan election violence in 2007-2008. The Kenyan violence, a serious internal problem, is of much less gravity than the massive death and displacements in Syria, probably by a factor of about 200 to 1.

The double standard of Fatou Bensouda is also evident from the impunity of Great Britain for the crimes committed in Iraq and the impunity of the United States, France and Canada for crimes committed in Afghanistan, the latter, a signatory to the Rome Statute. Prosecutor

Bensouda has a different attitude when crimes are committed by the proxies of United States and Europe in neo-colonialist aggression on Syria compared to internal unrest and serious violence in Kenya. Kenyan politicians and the African Union consider the ICC charges against the Kenyan President and Vice President as "demeaning, condescending, neo-colonial posturing," to use the words of defense lawyer, Chief Charles Taku[1]. The threat of charges at the International Criminal Court is considered as a means of preventing the commission of war crimes. On the other hand, the consistent failure to act provides tacit guarantees of full impunity.

More recently, since September 2014, the United States has undertaken a bombing campaign on the east and north-east of Syria. This campaign is illegal since Syria is a sovereign country which has not authorized such strikes. There has been no Security Council resolution permitting these attacks. No excuse such as the threat of Isis, can justify such a violation of international law. It has become generally known that the ISIS is a simple mutation of the terrorist groups that the United States and others have been supporting and arming since 2011. The United States benefits from double impunity at the ICC since the United States is not a signatory to the Treaty of Rome and the crime of aggression is not recognized by the Treaty of Rome. It is most likely that the bombing serves to destroy Syrian infrastructures and is a precursor to a campaign to oust President Bashar el-Assad elected on June 3, 2014 with a 62% majority. The United States is unmoved by the fact that this type of regime change is illegal in international law. It is likely that Syria will lose control of some areas of north-eastern Syria to Turkey and NATO if this loss of control has not yet been materialized.

Similarly, the simultaneous bombing of Iraq is very problematic. Only after replacing Prime Minister Nouri al-Maliki by Haider al-Abadi and the formation of a new government in early September was the bombing authorized by Iraq. American military authorities are saying that ground forces will necessary and President Obama has promised a bombing campaign. Canadian troops are on the ground in Iraq. A full land invasion is quite likely. Where is the ICC Prosecutor with this threat of aggressive war and war crimes? Once again, there is no protection offered by International Law and international organisation against this implementation of aggressive war on Syria and Iraq.

Gaza

After the Israeli war on Gaza in July and August 2014, there has been much talk about possible charges against Israeli leaders at the International Criminal Court. The Prosecutor has stated publicly that there can be no charges at least until the Palestinian authority has signed and ratified the Rome Statute. If and when this happens, there will be long time delays before even a preliminary examination can be undertaken. Furthermore, Israel is not a party to the Rome Statute. The lack of political will of the Prosecutor does not bode well for the Palestinian victims of summer 2014.

There has been considerable discussion of the so-called United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict (HRC Gaza Commission) voted by the Human Rights Council on 23 July 2014. The naming of one of the Commissioners, William Schabas, has been the subject of considerable controversy since Schabas has been critical of Prime Minister Benjamin Netanyahu and former President Shimon Peres. In response to the allegations if impartiality, he stated to the *Canadian Jewish News* on 25 August 2014, that "Explain to me what it means to be a foe of Israel, because I have nothing against

Israel. I've visited it frequently. I love the people there, I love the country. I don't have any opposition to Israel."

William Schabas is not a stranger to international commissions and testimony in international cases, in particular known for his support for Rwandan dictator and United States ally, President Paul Kagame. Schabas has testified as a so-called "expert" on behalf of the Government of Rwanda in favour of extradition of four men from Britain to Rwanda. His testimony was to the effect that fair trials could be held in Rwanda so extradition was justified. On 8 April 2009, British High Court Judges Law and Sullivan did not believe him and referred to his testimony as being "unreliable, cavalier in his approach, lacking in neutrality. He was not a dispassionate observer. He was not up to date on Rwanda" and that his changing position "undermines his reliability as a dispassionate expert."[2]

William Schabas is known since 1993 for his partiality in favour of the United States ally, the Rwandan Patriotic Front. He was a member of another "commission" in 1993, International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990. In February 1993. He was co-author of its final report severely criticised for its biased approach, investigating only the Rwandan Government and ignoring the excesses of the RPF "rebels".

The HRC Gaza Commission will no doubt limit itself to deciding on the basis of international humanitarian law and add to its likely muted criticism of Israel some unfair criticism of the Palestinian resistance for bombing Israel – of course with its very limited military means. It will not take into account, the right of the Palestinian resistance to use all means including military means to regain the full national rights of Palestine as recognised by paragraph 5 of General Assembly Resolution 3236 adopted on 22 November 1974. It will not and cannot call for the withdrawal of Israel from Palestinian territory and a complete resolution of the Palestinian issue by a necessary political solution.

Back to Fundamental Principles

Recent international criminal law has virtually eradicated the principle of the sovereign equality of peoples. The fundamental principle of the Nuremberg judgment, namely that the crime against peace is the greatest international crime, has been replaced by superpower intervention by military might under the doctrine of the right to protect (R2P), and by political and judicial intervention. It is necessary to reinforce the United Nations with the fundamental principles on which it was created. When these reforms have been completed and the principles underlying the United Nations have been re-established and adapted to the early twenty-first century, it is possible that a fair International Criminal Court may be born, just as the international community had hoped at the end of the Second World War. There could then be a true deterrent to the wave of aggressive wars which are a plague to the early 21st century.

John Philpot *is an international criminal defense lawyer who has defended clients before the International Criminal Tribunal for Rwanda, including the Appeal Court in The Hague, and the International Criminal Court. He is co-editor of Justice Belied, The Unbalanced Scales of International Criminal Justice (Baraka Books, 2014)*

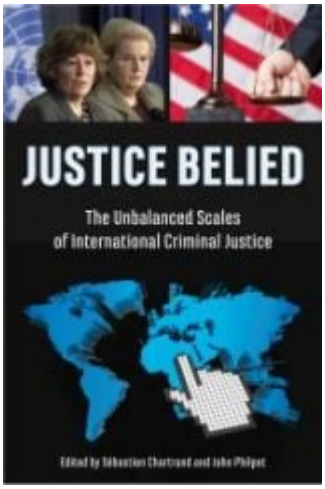
Notes:

[1] Chief Charles Taku, "The ICC and Kenya: Going beyond the Rhetoric," in of Justice Belied, The

Unbalanced Scales of International Criminal Justice (Baraka Books, 2014)

[2] Neutral Citation Number: [2009] EWHC 770 (Admin) , Case Nos: CO/5521/2008, CO/5686/2008, CO/7806/2008, CO/8429/2008, CO/5861/2008, CO/6247/2008 & CO/8862/2008, IN THE HIGH COURT OF JUSTICE

DIVISIONAL COURT ON APPEAL FROM THE CITY OF WESTMINSTER MAGISTRATES COURT,(District Judge Evans)(AND IN THE MATTER FOR JUDCIAL REVIEW,Royal Courts of Justice,Strand, London, WC2A 2LL,Date: 08/04/2009,Before :LORD JUSTICE LAWS and LORD JUSTICE SULLIVAN, Between :Vincent Brown aka Vincent Bajinja,Charles Munyaneza , Emmanuel Nteziryayo, Celestin Ugirashebuja, Appellants and The Government of Rwanda And The Secretary of State for the Home Department,Respondents



Justice Belied: The Unbalanced Scales of International Criminal Justice (By Sébastien Chartrand & John Philpot, editors)

An aura of respectability hovers over international criminal tribunals. “Undeservedly,” say many practitioners who bring to bear hard facts and penetrating analysis. African jurists, who are rarely consulted, describe the nearly exclusive focus on Africa as “demeaning,” “condescending,” and “neo-colonial posturing.” International criminal law has also been touted as a means to fight impunity and to achieve peace and reconciliation. Yet most practitioners see it as a “monument to impunity,” an impediment to peace and reconciliation or war by other means.

For the first time in a book, defence counsel, investigators, journalists, and academics pool their knowledge and experience to answer the burning questions. What has happened to the fundamental principles of the sovereign equality of nations and the right of self-determination? Why do international criminal tribunals target Africa? How has international criminal justice affected the lives of citizens throughout the world? What about universal jurisdiction? Does foreign policy trump justice?

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