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Hybrid Tribunals - Internationalized National Prosecutions

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Hybrid Tribunals—Internationalized National Prosecutions

Professor David Crane

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PROFESSOR DEL DUCA: We are delighted to have with us as our next speaker Professor David Crane from Syracuse Law School, who has a distinguished career with the federal government, but comes to us today primarily as the Chief Prosecutor for the Special Court for Sierra Leone. He is the first United States citizen to have been appointed as a Chief Prosecutor for an International Criminal Tribunal since Nuremberg.

In the Federal government, he has had a variety of interesting positions as Inspector for Federal Procurement and he has also been counsel to intelligence agencies, and has been on the faculty at the Judge Advocate General School at the University of Virginia. We are delighted to welcome him. Please give him a warm welcome.

(Applause)

PROFESSOR CRANE: Good afternoon. It’s good to be here in Penn State. Being a Syracuse graduate as well, I recall that the last time Syracuse University and Penn State University played, and they played football against each other for 95 years. When Penn State went to the Big Ten, of course Syracuse is in the Big East, we stopped playing each other. It was really quite a rivalry. It went back and forth and for a while Penn State used to beat us regularly. I have to say that the last game we ever played with you here Syracuse won. So I thought I’d just

kind of throw it out kind of as a dig. I graduated from Syracuse University College of Law in 1980.

PROFESSOR DEL DUCA: Welcome anyway.

PROFESSOR CRANE: Yes, thank you very much. But I've never been in Happy Valley before so thanks for giving me a chance to come on over here and talk to you.

I am pleased to add to some really excellent speaking that was going on and discussion we had this morning.

The 20th Century—Mankind's Bloodiest Century

Like my colleague Richard, I look at this as a half full glass, not a half empty glass. We've only been doing this in the modern era for 13 years and look at how far we've come. If you look at the twentieth century, mankind's bloodiest century, somewhere between 235 million human beings were killed, 135 million by their own governments. We don't have a great record in trying to account for mass deaths, mass killings, mass disappearances, whole chunks of populations disappearing into the sands of time. As I mentioned this morning, really in my mind this is the ultimate atrocity.

So we have some attempts. A lot of it politically driven as the Ambassador talked about, but really it was right in the middle of the century we had this shining four years where mankind seemed to start building some cornerstones that we all thought would be the beginning of accountability in the twentieth century, and sadly the Cold War largely overwhelmed many of those efforts.

Nuremberg Trials

But just stop and think, from 1945 to 1949 look what we did in the middle of this gore. We had the Nuremberg Trials, which by the rule of law closed the book on World War II. We also had the United Nations created. We had the Universal Declaration of Human Rights. We had the Genocide Convention and we also had the Geneva Conventions of 1949.

So if you look at it in those four years you're going to say my goodness, we may have gotten it right. Then there is this huge almost fifty-year gap, forty-year gap where largely nothing was done. We had such monsters as Idi Amin and others, some people behind the Iron Curtain who were dealt with appropriately and inappropriately, and we had the international community take Idi Amin and place him off in Saudi Arabia for the rest of his life.

Response to the Horrors of the 1990's

At that point that seemed to be politically the international community was going is if you had a bad head of state, you corralled him and took him off somewhere on an island of Elba, so to speak, like Napoleon. But that's not good enough. Mankind is better than that. And so we see at the 1990s, just as this horror was kicking off, that mankind began to develop methodologies by which we could face down the beast of impunity. I think we should face down the beast of impunity wherever it rears its ugly head appropriately, and there are many ways we can do that appropriately.

The Sierra Leone Court—Lessons Learned from Yugoslavia and Rwanda

But in 2002, I was given the opportunity to start a new experiment in how we dealt with the beast of impunity. That is what I want to talk to you about today. It is a little bit about the International Tribunal in West Africa called the Special Court for Sierra Leone, but most importantly I will talk about lessons learned, because again, we learned a great deal from our colleagues in Yugoslavia and Rwanda. What we are also seeing here really is the next generation of an evolutionary process. So don't get discouraged. We have only been doing this less than 15 years. You know if a hundred years from now we're still dealing with these issues, then maybe we can be a little bit concerned, but at this point, as John Lennon used to say, give peace a chance. All right?

Special Hybrid International War Crimes Tribunal

Let's talk a little bit about where we're going with this. I'll talk a little bit about why we had the Special Court, why there was a need for a hybrid international war crimes tribunal. Very briefly talk about just the court itself. It's a familiar organization, but highlighting some differences which I think are important to advance the cause of international criminal law. More importantly we'll talk about lessons learned because we had a really important seedbed of about three years, four years, it's still ongoing and it will be completing its work in about a year, year and a half. But this was a beginning, middle and end of a new experiment which we could use as a case study as to where this is all going and what we should expect in the future. I just want also to throw out the rhetorical question, (and we certainly can talk about it during the question and answer period hopefully with my colleagues but also with you out there in television land) of whether we are we delivering the justice the victims seek. I kind of alluded to that this morning in one of my comments.

So let's go ahead. But first let me give you the concluding thoughts

right up front so that when you begin to doze off you got everything that you needed to know to take the exam at the end of the symposium. Did they tell you about the exam? Okay.

Regional Hybrids Work

Hybrids work. That's the bottom line. They do work. They are an important tool in facing down that beast of impunity and I think that's something that we need to be seriously considering in the future, regional hybrids work. The key to it is you can shape and mold a mandate in a way that is necessary for the circumstances by which they are needed. It's not just a complete cookie cutter approach. We came in and we adjusted. You can take the mandate and overlay it to the circumstances by which you need to address the situation, the impunity and the atrocity that took place.

They are efficient and effective if they have a proper mandate. But if they're not in the UN system, and we can chat about this, (I have to tell you that that we are of the UN and not in the UN) and therefore we were able to quickly move in with our ten-phase plan and get it started. Within seven months, while we're continuing to build, literally build the court, (i.e., set up, hire people), we issued eight of the 13 indictments arresting most of them in a 55 minute arrest operation in Operation Justice.

The UN couldn't do it. Not because they didn't have the desire or the people who could do it, it's just that you can't hire people fast enough to get them in and get them started. It's just a simple fact. It's not to cast aspersions on the wonderful people that would try, but my colleagues in the other tribunals looked on with great jealousy on the fact that if I needed you to come work for me, you came and worked for me. Within four weeks getting all your shots and just getting you over there, you could be sitting at your desk and that's allowed me to get this thing going. It's as simple as that.

Time was a factor. We wanted to show it could be done efficiently and effectively. This is also something that you need to take away today it must be accomplished in a politically acceptable time frame. Tribunals that linger too long begin to fray around the edges and cause problems and in some ways could be a detractor of peace as opposed to creating a peace. So we need to be thinking about that.

Of course, because they're flexible, hybrids are perfect compliments as we talked about this morning to the International Criminal Court. It is another tool by which the international community can deal with an atrocity. The reason why that's important is if you go into places like West Africa in Sierra Leone, when I stepped off the airplane in August of

2002, there was no place to live, no place to work, there was no running water, no electricity. The court system largely did not exist and most of the lawyers had either been killed or fled or incapable of, in fact, of seeking justice.

Now, in a domestic situation under the Rome Statute in the concept of complementarity, certainly we would want a domestic court system to try. But we now have another model when we get into situations where the domestic system literally does not exist and you can use a regional hybrid to come in and do the work that is necessary and it compliments of course the work of the ICC.

And then certainly we have a simple mathematical tool that we have to have both truth and justice in whatever form that takes itself to create a sustainable peace. I would posit out to you that if one of those is missing, a chance of sustainable peace is questionable.

Now, it was a bold new experiment. We had a horrific situation that took place for ten years in West Africa. I won't get too much into the gory details other than the fact that at the end of the day a joint criminal enterprise headed by Muammar Qaddafi, Blaise Compaore of Burkina Faso, and Charles Taylor of Liberia joined together to geopolitically influence West Africa. They did so in many, many ways using the diamond fields of eastern Sierra Leone as a way to finance this particular joint criminal enterprise. Placed right in the middle of all of this were gun runners, diamond dealers, terrorists, boy generals, other politicians, financiers from multinational corporations, et cetera, all in the mix trying to influence and take advantage of really a place where the rule of law did not exist.

The result of this joint criminal enterprise over a period of about ten years resulted in the destruction of two countries, and the murder, rape, maiming and mutilation of over 1.2 million human beings. Now, did you know about that at all in the nine or ten years that you were alive in the 1990s? No, largely not.

My biggest challenge was the political spectrum and indifference. People didn't care. How do you, in fact, try to get people to back you politically, back you financially when it's a politically war weary world and their interests are elsewhere, such as in the Middle East and in Iraq? How do you sustain an effort that is actually largely being successful when the world is looking elsewhere? So it's a huge problem.

But in all of this gore, all of this mess, the President of Sierra Leone sent a letter to Kofi Annan saying I need help, I can't take care of this. I can't account for this tragedy. The UN responded and I think responded in a proper way. It created the Special Court for Sierra Leone in UN Resolution 1315 in August of 2000. And over a period of two years, created the framework, this new experiment called a Hybrid International

War Crimes Tribunal.

Sierra Leone Hybrid Court

Structure

Now, the Special Court is familiar to you if you're a student of international tribunals. It of course has the chambers which are the hybrid portion in reality of the court. The statute allows us to use some aspect of Sierra Leonean law, but also each of the two trial chambers has a Sierra Leonean judge and two international judges. And then in our appellate chamber, our court of last resort, it has two Sierra Leoneans and three internationals. Of course as the prosecutor, I had about 40 percent of my office from Africa and 30 percent of my office was from Sierra Leone as well. Not only did we have the chambers, but we also had the registry which runs the court on a daily basis, and my office, the Office of the Prosecutor.

But what I want to highlight for you is the concept of an office of the principle defender, which was an idea of the registrar, which I thought was an excellent idea, and that is to manage the nine trial times at the time and now ten that were representing the various indictees that we indicted, which was from Charles Taylor, the sitting president of Liberia, all the way down to various generals and other ne'er-do-wells who destroyed this country and bleeding over into Liberia.

So this person made sure that they got the same support that any other organ of the court as we say was getting. So we believed in the quality of arms and that they had the same offices, same staff support, as well as same information, management support to make sure that they were properly having the capability of defending these individuals because the key thing to all of this when you're in locations such as we were, we want to show that the law is fair. Not only that no man is above the law, but the law is fair because at the end of the day, you have to remember this, they're the ones that are going to have to live with the result, not us. So even if they didn't like the result, if they believe it's fair then certainly we have a positive situation. So that's the Special Court's organization.

Lessons Learned

Now, lessons learned I think is very, very important. A narrow mandate is a key to success. My mandate was to prosecute those who bore the greatest responsibility, and that is the great political compromise which we were discussing this morning when Richard Goldstone was

talking about politics, politics and politics, is that the compromise to create the Special Court for Sierra Leone back in August of 2002 was greatest responsibility. That is the standard that we're probably going to most likely see in the future is greatest responsibility. We cannot prosecute everyone. In the Sierra Leonean situation that would have been about 35,000 people. In Bosnia and elsewhere, in Rwanda, that number goes up to tens of thousands.

Greatest responsibility is about 20 people or less in the West Africa model. That will take about five to six years. If you say most responsible, that number goes to 100 to 300. That would take about 15 to 25 years to prosecute. If you drop all of the most or greatest and just say responsible, like I told you that's 35,000. Can't be done. We do have an impunity gap, yes, but from the international criminal level, you will throw the baby out with the bath water so to speak if you try and even attempt to try those who created this tragedy, every one of them. I would posit to you that one of the lessons learned is a narrow mandate, greatest responsibility.

I told you already inherently flexible. You can shape and mold the mandate itself to deal with whatever you need. You can have an internationalized domestic court or you can have a domestic court, a hybrid model in some way, or you can have an international tribunal like the Special Court. You can shape it depending on the political will of the region as well as the international community.

Another key is to place the tribunal if you can right where the crimes took place. The Sierra Leonean people, West Africans saw justice done right in front of their eyes, beginning, middle and an end.

Another key aspect is outreach. Outreach is an absolute key to success. We developed a town hall program where I literally walked the entire countryside the first four months I was there listening to my client tell me what took place. So they could see their prosecutor and they could begin to understand in some ways what we were all about. And for three years during my tenure there, I went back upcountry and explained to them what we were doing and listened to them tell me how things were going from their perspective. Very, very critical. Outreach is an absolute key to success.

Of course we also had a legacy program, which means we want to leave something with the people of West Africa when we leave, not just a just result. So we were training prosecutors, we were training Sierra Leonean police, we were training investigators, and also case managers in how to deal with complex cases. These fine men and women from Sierra Leone remain in Sierra Leone to begin to rebuild their missing justice system. So legacy is also very important.

I've already told you that the UN is important only to a limited

degree. Politically it's important. It's important as far as oversight, but if you put a tribunal right into the UN system it gets lost into the UN system. I think that it is very, very important for us to understand that through "of the UN" and not "in the UN" you can accomplish your narrow mandate.

As I told you also truth plus justice equals a sustainable peace. You have to have some type of truth capability. When I went to Sierra Leone, my prosecutorial philosophy was we can't try every tragedy, we can't account for every human being that was destroyed. So we did representational charging, picking areas that represent the gravamen of the entire conflict so that we could for history purposes as well for justice purposes account for that, but we didn't go out and do all of it.

Notice Pleading

We also did something for the first time in international criminal justice, and that is notice pleading. That is we just had very narrow specific charges in our indictments. I was brought up if you plead it, you prove it. And instead of having 80, 90 page indictments, the longest page wise indictment we had was about 20 pages, and that was a 17 count indictment of Charles Taylor. So again, those have been sustained judicially and so I think that that's something that we need to be considering. We can talk a little bit more about some of the legal groundbreaking decisions that were made relating to heads of state, child soldiers, gender crimes, what have you at a later time.

Establishing Rapport with the Local Population

The challenges like I've told you were indifference and state support. No one cared. I would travel and I have to tell you that 70 percent of my time once we got our ten-phase plan in place, and we're in phase ten right now, and that is the trial phase. Once we got that going and all the wonderful people that worked for me were doing their thing, I basically traveled the world trying to keep the world focused enough to keep the money coming and also keeping the political support. It's absolutely critical in a Chief Prosecutor's position. If not, that support will actually disappear despite your successes. I'm not saying that we were perfect, but I think that we have shown that a hybrid does work, and despite the success, we were still having major challenges funding as well as just interest. I think that that is very, very critical as far as keeping the international criminal justice model moving forward.

The key question I want to ask you is the justice we seek the justice they want. I call it the spaceship phenomenon. I'll give you a real quick example in our town hall meetings. The first one I went to was in

Kenema right in the heart of the diamond fields, right in the heart where the whole thing started in 1991. I did that of course symbolically as well.

A week prior we go out talking to the paramount chief, the district officer, seek his permission to do this was always granted. The day before UN peacekeepers would come in and secure the area, so there would be a lot of blue helmets around. The day of the event they would secure the landing zone. They would hear this big chopper, an MI-8 Russian from the Ukraine come whopping in and land, big UN, white thing. Many of the Sierra Leoneans thought that the helicopter was an animate object.

So here we have this individual and you land, all the police are there and the peacekeepers are ringing the landing zone and the ramp comes down and out walks me. Some of them had never seen a white man before, particularly a blond white man. It was like the Day the Earth Stood Still, that movie where the flying saucer lands in the mall.

But the point is that how do you go from that phenomenon and they literally shrank back. How do you go from that moment to where you're standing in front of them after three hours, you're weeping, crying, talking, meeting with them and they're telling you stories beyond belief? How do you do that? Well, that's very, very important to understand the cultural approach to international criminal justice. I was fortunate, I have a master's degree in West African studies. So I had a perspective that was helpful and I understood that family was a very important part, a very important part of society in West Africa.

So instead of standing in front of them saying I'm David Crane, I'm the Chief Prosecutor of the Special Court and I'm here to help you, not. Instead of standing at the high table like this, I walked among them and I would tell them about my family. I would say I'm Dave Crane from the State of North Carolina, talk about my wife, my children, my pets. Huge laughter begins. Talked about our cat named Uncle Skeeter. Uncle Skeeter became the most popular animal in Sierra Leone. I was asked all the time about how is Uncle Skeeter.

Then I would tell them myself and the wonderful people that work for me have left their families from all over the world and I've left my family in the United States and I was wondering if you would give me the honor and the privilege at least today of being a part of your family. The tension would just drain out of the room. People would applaud, they came up and hugged me in welcome. Then after things kind of settled down, I said now that you've given me the honor of being a part of your family, let's talk. And for three hours I would stand in front of them listening to them tell me what took place in Kenema and Port Loko and Pujehun, wherever it may be.

Three Joint Criminal Trials

When we left, I had a better feeling about what took place, they had a better feeling about their prosecutor who understood somewhat what they went through, and then we began to build and work on our investigations and our witness management program, et cetera. So that at the end of the day we ended up having three joint criminal trials, plus Charles Taylor, it would have been three criminal trials if we had Charles Taylor, but that's a political issue and we won't talk about that now. But the point is that we had 395 witnesses, 393 showed up. Because the case was not a Nuremberg case, we didn't have trainloads of documents. We had witnesses, human beings, Sierra Leoneans and West Africans who came proudly and with great dignity. And it's a powerful, powerful scene to see these people being brought into the courtroom, some of them literally have to be carried because they're missing all of their limbs. Sitting there pointing at these individuals because they don't have a hand saying you did this to me. And then watching them limp, walk, be carried out of the courtroom with their head held high because they represented their family, their town and in their own way sought justice. And that is justice. That is what international criminal justice is about is that very moment when that victim walks out past these individuals with their head held high.

So I just want to throw this out to you, it's important, we need to, in fact, enforce international norms, but we need to always consider other alternatives and ways we can make it palatable for the people. Those are the concluding thoughts again. You've seen it. I've already put this up front, and that is the hybrid system does work. It is a tool in a kit bag of the international community to face down the beast of impunity. With that, I will just leave that with you and I look forward very much just having a dialogue now and for the rest of the day. Thank you very much.

(Applause)

PROFESSOR DEL DUCA: Any comments from the panel? Yes.

JUDGE GOLDSTONE: I have a question for David, and that is I'd very much like to know his views on the Charles Taylor trial being held in the Hague. What were the arguments going on? I know there were many of them going both ways. I think it would be interesting to get your assessment if it was up to you to decide, what you would have decided.

PROFESSOR CRANE: We knew we were eventually going to get Charles Taylor. We were hoping that we'd get him sooner than later, but we got him and that's all that counts. It matters that he be fairly prosecuted wherever he may be, but our initial plan was to get him out of West Africa just until the dust settles. We were looking at putting him

someplace such as the ICC or the Hague just during the pre-trial process and let things kind of settle down emotionally and politically and then we would bring him back to trial in Freetown and I always felt and still feel that he should be tried in Freetown. However, I'm not going to second guess the President of the Court, who had been requested by both the presidents of Sierra Leone and Liberia, of having him tried elsewhere. Our Article Four of our statute allows us to try a case anywhere in the world that is necessary. It's basically our get out of town—actually call it our—what was the term in the movie MASH? Bug out. If things got really hot and heavy, we literally could pack our bags and reconstitute anywhere in West Africa or the world.

So they moved him to the Hague. He'll be prosecuted not by the ICC. The AP got a little bit of wording wrong here. The impression was that the ICC was going to prosecute Charles Taylor. We've borrowed a courtroom from the International Criminal Court, but he will be tried in the Hague by our Trial Chamber Number Two in April of next year. And that trial will last about a year on an 11 count indictment for various war crimes and crimes against humanity.

I think Richard brings up a very important question. As you were listening to my talk, the beauty of hybrid is it's there and the victims get to see it. It's a challenge for other colleagues and other tribunals because they're not there. The test was well, let's see if we can do it right in the middle of the crime scene. It's been shown that if the security can be appropriate and that you can do this, the benefits are just incredible.

However, it's not going to happen. I wish it would have happened. I can respect the fact that security is one of the criteria by which you have to always be mindful. It is there. It's a tenuous situation. Let me give you just a real quick vignette. I was giving a speech at the University of Western Ontario and I knew that he was being brought back to Sierra Leone, and I had asked that you call the minute he lands in the compound. I mean obviously I've lived and breathed my entire time there to see him come.

So my former special assistant called me in tears, right in the middle of the speech I was giving. What she was telling me is that Special Court in which we built sits in kind of a bowl and there are hills and houses all around it and there were tens of thousands of Sierra Leoneans cheering as Charles Taylor stepped off the back of that MI-8 helicopter. It was a very special moment for all of us, mankind, to see the most powerful warlord in Africa humbled before the law. I think that that was a tremendous moment for the Sierra Leoneans and also a moment for international criminal justice. It would have been nice to see him tried there, but remember he was arraigned in front of the world in that courtroom, Trial Chamber Number Two. You've seen those pictures of

him being humbly led in handcuffs. Again these are special moments for international justice.

JUDGE GOLDSTONE: What are the prospects of the trial being broadcast on radio and television in Sierra Leone?

PROFESSOR CRANE: Well, it's a logistic problem of course. They are going to do that. They are going to try to broadcast. We have an outreach section. We have outreach teams. We have a district outreach officer in every single district in Sierra Leone. We videotape all of the proceedings. You know in a country that doesn't have any communications other than listening to BBC Focus on Africa on a hand-cranked radio in many parts of the country, we would literally tape everything. We have mobile TV units that go out and we literally show the trial, just traveling road shows all the time. It's going to be a challenge. The intent is to broadcast it to the extent that they can in Sierra Leone and West Africa. Those logistics are being worked out.

Obviously, there are challenges relating to bringing witnesses to the Hague, but it will be done and it will be at a cost, but again it is what it is as we always said. It will be a logistic challenge, but it will be done.

PROFESSOR DEL DUCA: Further questions or comments? Yes.

STUDENT: Over the years, there have been a series of cases of criminal offenses in countries of Africa under military government but the United Nations did little or nothing. The only thing the United Nations has done is to sanction the country, but the military governments do not have any regard for the United Nations. What is the United Nations accomplishing the countries ruled by the military government?

AMBASSADOR WILLIAMSON: I think it is hard to say what the United Nations is doing across the board. I think every country has to be taken individually. This is one of the problems in the West. Too often people tend to paint Africa with one brush. They sort of take, you know, what happened in one place and apply it everywhere else. Every country is distinct. Every country is unique. So again I think it depends on the situation in any given country.

One of the things that has been a problem in Sudan, for example, is that the international community has sought support from other African leaders on how to respond to Sudan. Very few of the African leaders have been willing to speak up and to criticize the Sudanese government or to speak strongly about what is going on there. We see the same sort of thing with Mugabe in Zimbabwe. The government's other political leaders have been unwilling to speak out. So it has been difficult to get buy-in from people on the continent to international solutions. We still see this ongoing with Sudan.

Richard, as an African, you might be in a better position to answer some of this than I am.

STUDENT: As an example, Nigeria and the military government in 1992. The United Nations tried to intervene, but there was restraint on the part of United Nations. People begin to wonder what is the United Nations, what are they up to if they cannot intervene in some kind of way? This has been persistent over the years, not only in Nigeria, but in every part of Africa, because military government is the rule. Democracy cannot find its roots. This situation has generated much controversy. I'll be glad if that can be addressed.

AMBASSADOR WILLIAMSON: Well, I'll start and maybe somebody else may wish to jump in. Decisions taken at the UN are taken by the member states. The UN as an organization often is responsible for implementing decisions. Like for example the UN peacekeeping operations goes out and runs a peacekeeping operation in a given country where one is set up. However such operations are mandated by the Security Council.

So in order to authorize action by the UN, action by the member states is required. Going back to what I was saying a minute ago, the international community has tried to get African buy-in to do this. I think people are reluctant for the UN to act and for it to be seen as outsiders intervening without the support of people on the continent. It has proved very difficult to get this kind of support. Sudan again is a prime example where governments that have been interested in getting the UN peacekeeping force there have sought the support of African leaders neighboring Sudan and from all parts of the continent to put pressure on the Sudanese government to accept a UN peacekeeping force. A few have been willing to do this, but as a whole they have not. The African Union has not taken a very active position on this. Your president, President Obasanjo is the first one who has actually come out and said that there might be a genocide going on in Sudan. He's the first African leader to do that.

But the point you make I think is a valid one that because a lot of these people, a lot of the leadership in African countries are military dictatorships or whatever they have, you know, corruption or big problems of their own, they have been unwilling to throw stones. You know the saying people in glass houses don't throw stones. They don't want to criticize another leader or to authorize some sort of outside intervention for fear that the same thing might happen to them one day.

It is very difficult problems to overcome. I think we are trying to work through this. There are some progressive leaders on the continent who are trying to get past this. There are people in the African Union who have the intent to get past it, but it's a slow process.

JUDGE GOLDSTONE: I would just add briefly I agree with everything that Clint has said. I think one of the weaknesses of African

leadership is this reticence or refusal for African leaders to publicly criticize each other. And I think the attitude to Mugabe is the best example. No African leader has really spoken up. I think Archbishop Desmond Tutu is the only person who has consistently spoken up although more recently President Mandela has spoken up.

I'm not sure it isn't a part of a postcolonial syndrome. I think it's going to take Africa more time than it's taken to recover from colonialism. I think there is what I regard an unfortunate refusal to be critical. In South Africa, I think President Mbeki's refusal to publicly criticize what's happening in Zimbabwe is wrong. Not that it would have made any difference. I don't think that anything that South Africa said or did would have changed one thing in Zimbabwe. I'm disappointed because I think President Mbeki should have been highly critical for our own people. I think he should have said this is not the way, this will never happen in South Africa, this is not the way democracies operate, but he hasn't, and I think that's a disappointment.

As far as the UN is concerned, I think it's a little unfair to criticize the UN for the reason that Clint has given. The UN can't do any more or less than its member states will allow. There's no such thing as the UN doing this or the UN doing that out of its own volition. Implementation at the UN is often justifiably criticized for bad implementation, whether it's corruption, Oil for Food, or inefficiency in peacekeeping or whatever the case may be. However, the policies are not set by the UN. They're set by the Security Council in most cases and sometimes by the General Assembly.

PROFESSOR DEL DUCA: Next question please.

STUDENT: We have been talking about the procedure for the taking of evidence in international criminal trials. I must confess I was impressed by hearing the numbers of witnesses from Sierra Leone that decided to show up and testify against those individuals. I was wondering are there special measures which are adopted to protect those witnesses for and after the trial in order to prevent revenge against them or their families?

PROFESSOR CRANE: Well, I'm glad you asked. There is. We immediately sought and were granted a very sweeping protective order to protect the individuals. We had extensive judicially directed and other ways of protecting all the witnesses. They were given numbers, they were brought in, et cetera. We also did something that is somewhat unique in the Office of the Prosecutor. Each tribunal has a victim witness management unit that kind of protects individuals when they come into the court and gets them oriented and focused as to their testimony. But prior to that, there was largely nothing done.

What we did was build what we call a Witness Management Unit in

the Office of Prosecutor. We took the Canadian and U.S. model and overlaid that and then 395 persons actually testified. The total was over 500 when we were investigating. We went out and monitored every person that was going to testify, and met with them on a regular basis. If it was a gender crime victim, we had gender crime investigators and psychosocial workers would have either worked with these individuals to get them to agree to meet with us. In some cases it took two years before they actually walked in. I mean how do you get a Muslim woman who has been raped 40 times living upcountry to agree to come down and give her testimony at the international tribunal level, never having been to Freetown whatsoever?

We were not only accounting for them, we were also protecting them. We are always monitoring their particular area. We coded them. If they were potentially going to be injured, we would move them. There were several times when we had to move people in Sierra Leone to West Africa or even outside Africa. Some of them are in deep protection because they will die if found. But they were protected. They were brought in.

Most importantly and part of the legacy program was to train an entire unit of Sierra Leone police, which was part of my office during this time frame, in post-trial protection and support methods. This particular unit is watching and monitoring and working with these victims who have gone through this tragedy because they've got to relive it again. When you're testifying, you got to relive that traumatic situation. They need help afterwards. So we are training Sierra Leoneans to have this unit which when we leave will be literally transferred right back into the Sierra Leone police and we'll continue to monitor them as well as to start training other investigators to, in fact, take care of things. It's very, very critical and it's necessary because when you only have testimony from witnesses and no paper, you've got to take care of them, because our concern is if you lose one, one dies publicly, all of a sudden they all disappear and there goes your case.

