



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 18, 2007

The Honorable Richard J. Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of Deputy Assistant Attorney General Sigal Mandelker before the Subcommittee on February 5, 2007, concerning genocide and the rule of law. We hope that information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Hertling".

Richard A. Hertling
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Tom Coburn
Ranking Minority Member

**Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate**

**Hearing on
“Genocide and the Rule of Law”**

February 5, 2007

**Questions Submitted by
Senator Richard J. Durbin
Chairman**

Sigal Mandelker, Deputy Assistant Attorney General , Criminal Division, Department of Justice

- 1. In your written testimony, you stated, “our nation has taken a leading role in establishing and supporting such notable institutions as the Nuremberg and Tokyo Tribunals after World War II and, more recently, the International Criminal Tribunals for Rwanda and the former Yugoslavia, the Special Court for Sierra Leone, and the Iraqi High Tribunal.”**

Please provide a detailed description of efforts by the Department of Justice and other federal agencies to assist the International Criminal Tribunal for Rwanda.

The United States government was instrumental in the establishment of the International Criminal Tribunal for Rwanda (ICTR) in 1994 and has been a leading supporter of the Tribunal since then. In fact, I understand from the State Department that the United States remains the single largest contributor to the ICTR budget, and our assessed contributions typically cover roughly one quarter of the Tribunal’s budget. In 2006 alone, the United States provided over \$32 million for the ICTR. The United States supports the ICTR politically and diplomatically, including by pressing other States to cooperate with the Tribunal through apprehension and transfer of indictees.

The Departments of Justice (DOJ), State (DOS), and Homeland Security (DHS), Immigration and Customs Enforcement (ICE), provide assistance, within their respective purviews, to the ICTR, in the context of specific criminal investigations and prosecutions by locating and extraditing fugitives, sharing information, locating and providing witnesses, arranging witness interviews and providing other assistance needed to investigate and prosecute those indicted by the ICTR with crimes within the ICTR’s jurisdiction.

The DOJ Criminal Division’s Office of International Affairs (OIA) takes the lead in DOJ on providing legal assistance and on international extraditions and certain other legal assistance. Through OIA, DOJ has also provided the ICTR with investigative support and other assistance in response to requests made by the Tribunal over the course of its existence. Additionally,

experienced prosecutors from DOJ have worked at the ICTR, with DOJ encouragement, under approved leaves of absences.

In March 2000, the United States extradited Elizaphan Ntakirutimana to the ICTR in response to that Tribunal's request. Ntakirutimana was charged with genocide, complicity in genocide, and crimes against humanity (including murder, extermination and inhumane acts) for his role in the 1994 Rwandan genocide. He was living in Laredo, Texas, at the time that the ICTR requested his surrender. Ntakirutimana fought to remain in the United States. The Department engaged in a protracted four-year legal battle, resulting in a decision by the Fifth Circuit Court of Appeals that allowed the U.S. government to surrender Ntakirutimana to the custody of the ICTR. Ntakirutimana's extradition was effectuated pursuant to United States legislation and an agreement between the United States and the ICTR for the surrender of persons responsible for genocide and other crimes falling under the purview of the ICTR. In 2003, Ntakirutimana was convicted by the ICTR of aiding and abetting genocide, and he was sentenced to ten years' imprisonment.

Regarding the second part of the question on efforts of other federal agencies, as we have previously advised Committee staff, we sought and included input from other agencies but we respectfully recommend that the Subcommittee contact the Department of State and other relevant agencies, should it require additional information.

2. Please provide a detailed description of efforts by the Department of Justice and other federal agencies to assist the International Criminal Tribunal for the former Yugoslavia.

The U.S. government was also instrumental in the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and has supported the Tribunal since its inception. I understand from the State Department that the United States is the single largest contributor to the tribunal's budget, and our assessed contributions typically cover a quarter of the Tribunal's budget. In 2006 alone, the United States provided more than \$36 million for the ICTY. The U.S. government supports the ICTY politically and diplomatically as well, consistently pressing States in which suspects are believed to be hiding to cooperate with the Tribunal through apprehension and transfer of fugitive indictees.

The Departments of Justice, State, and Homeland Security, Immigration and Customs Enforcement, within their respective purviews, have provided investigative support and other legal assistance to the ICTY in the context of specific criminal investigations and prosecutions by locating witnesses, sharing information and obtaining evidence, arranging witness interviews, providing forensic analysis, and providing other assistance needed in the investigation and prosecution of crimes within the ICTY's jurisdiction. The U.S. Government has also made a number of current and former federal officials available to testify before the ICTY, on behalf of both the Office of the Prosecutor (OTP) and defense teams. Additionally, a number of experienced prosecutors and law enforcement personnel from DOJ have worked at the ICTY, including under details and approved leaves of absences.

Further, with foreign assistance funds from the Department of State, as part of assisting other countries in carrying out their own prosecutions, the Criminal Division's Overseas Prosecutorial Development, Assistance and Training section (OPDAT) and the International Criminal Investigative Training Assistance Program (ICITAP) have the lead for DOJ in providing institutional and capacity support to those countries for war crimes prosecutions as well as for criminal justice sector reform and development, primarily to Serbia and Bosnia & Herzegovina, and to a lesser extent to Croatia, Montenegro, Macedonia and Kosovo. Such assistance has facilitated the transfer of several war crimes cases from the ICTY to the domestic judiciaries in Croatia, Bosnia & Herzegovina and Serbia.

In the context of supporting domestic war crimes trials throughout the Balkans, DOJ has, *inter alia*, assisted in drafting war crimes legislation in Serbia (including provisions for victim-witness support); trained members of the Croatian judiciary who are tasked with investigating war crimes; monitored war crimes trials in Bosnia & Herzegovina; provided advice and guidance to enhance cooperation between the United Nations Mission in Kosovo (UNMIK) and war crimes prosecutors elsewhere in the region; and provided equipment that facilitated international cooperation in war crimes cases. For example, DOJ has sponsored domestic war crimes training seminars in Macedonia and elsewhere, organized and funded study tours to the ICTY at The Hague for prosecutors and judges from Serbia and Bosnia & Herzegovina, and provided equipment for the War Crimes Chamber of the Belgrade District Court. Prosecutors and other personnel of the National Security Division's Counterterrorism Section, the U.S. Attorney's Office for the District of Columbia, and the Criminal Division's Office of Special Investigations have participated in the war crimes training programs for prosecutors and investigative authorities in Croatia.

Working primarily through OPDAT, DOJ has also encouraged cooperation between countries in the region in war crimes cases. For example, the Department facilitated the first-ever meeting between war crimes prosecutors from Serbia and Bosnia & Herzegovina. In addition, OPDAT has provided advice in the negotiation and implementation of the first agreement between countries in the region to cooperate in war crimes cases. The agreement provides a framework for cooperation while respecting each country's right to maintain jurisdiction. OPDAT also co-sponsored a regional war crimes conference in Montenegro in October 2006, which for the first time included judges and prosecutors from all relevant countries and jurisdictions in the region.

Regarding the second part of the question on efforts of other federal agencies, as we have previously advised Committee staff, we sought and included input from other agencies, but we respectfully recommend that the Subcommittee contact the Department of State and other relevant agencies, should it require additional information.

3. Please provide a detailed description of efforts by the Department of Justice and other federal agencies to assist the Special Court for Sierra Leone.

The U.S. government played a pivotal role in the establishment of the Special Court for Sierra Leone (SC-SL) in 2002. I understand from the State Department that the United States remains the single largest contributor to the Special Court, having provided \$35 million in

voluntary contributions to date. This sum represents roughly one-third of the Special Court's total funding. Additionally, the United States has been a key political supporter of the SC-SL, notably in pressing for the arrest and transfer of former Liberian president and SC-SL indictee Charles Taylor to the Special Court. This support included efforts to persuade the government of Nigeria – in which Taylor had been granted exile – to facilitate his transfer. We understand from the State Department that the United States also played a leading role in securing passage of a United Nations Security Council resolution allowing UN peacekeepers in Liberia to apprehend Taylor and transfer him to the custody of the SC-SL should he be found in Liberia. He is currently in SC-SL custody in The Hague, where his trial is scheduled to begin in June.

While the bulk of U.S. government efforts in bolstering the work of the SC-SL has been focused on the political, financial, and diplomatic fronts, the Departments of Justice, State and Homeland Security, through ICE, within their respective purviews, have also provided the Special Court with investigative support.

Regarding the second part of the question on efforts of other federal agencies, as we have previously advised Committee staff, we sought and included input from other agencies, but we respectfully recommend that the Subcommittee contact the Department of State and other relevant agencies, should it require additional information.

4. Please provide a detailed description of efforts by the Department of Justice and other federal agencies to assist the Iraqi High Tribunal.

In May 2004, pursuant to National Security Presidential Directive (NSPD)-37, President Bush established the Regime Crimes Liaison Office (RCLO) to assist the Government of Iraq to investigate crimes by Saddam Hussein and key members of his regime, and to help establish the Iraq High Tribunal (IHT) (formerly the Iraqi Special Tribunal) to prosecute those crimes.

As an initial matter, it is worth noting that while the United States provides critical assistance to the IHT, is an Iraqi-managed process. The IHT, created in December 2003, is a domestic court of limited jurisdiction to investigate and prosecute members of the former regime for war crimes, genocide, crimes against humanity, and certain other Iraqi crimes. The IHT generally follows Iraqi civil law procedures. It includes an Investigative Chamber of 24 judges, three Trial Chambers each of which has five judges, and an Appellate Chamber of nine judges.

The RCLO works closely with the Department of State to recruit international assistance to the IHT. The United Kingdom (training and international judicial advisor), Australia (training in court administration and public affairs), and Kuwait (investigative assistance) have all provided significant aid.

The United States has provided significant financial and technical support to the IHT through the establishment of the RCLO. To date, the United States has allocated over \$160 million to support the IHT through the RCLO. RCLO personnel number close to 100 full-time personnel, including six Assistant United States Attorneys (AUSAs), Department of Defense (DOD) judge advocates and other military personnel, an agent from the Drug Enforcement Administration (DEA), Deputies with the United States Marshal Service (USMS), administrative

personnel, and contractors, under the leadership of the Regime Crimes Liaison, a DOJ employee. The RCLO also employs several dozen Iraqis in the Secure Evidence Unit in Baghdad and linguists who work as translators. At various times, the RCLO has also employed as many as 20 personnel from DOD's Army Corps of Engineers and specialized contractors in the field. These included anthropologists, archaeologists, pathologists, and other forensic scientists who worked on the exhumations of mass graves and the preservation of evidence. The RCLO's forensic analysis functions have concluded and personnel levels are gradually being reduced, as the IHT gains experience.

The RCLO's major accomplishments include assisting in the establishment of the IHT, the drafting of its Rules of Evidence and Procedure; providing comprehensive international training of its judges and lawyers; supporting the IHT's first trial (al-Dujayl), which resulted in convictions and, in some cases, death sentences for Saddam Hussein and members of his regime; assisting in investigations of other major cases, including exhumations of mass graves in al-Hatra, Northern Iraq, and Muthanna in the south; establishing a Secure Evidence Unit in Baghdad and an online database of millions of documents in Arabic and English; supplying technical assistance in support of the completion of the renovated IHT Courthouse in the International Zone in Baghdad, including a fully wired courtroom, staff facilities, and holding cells; and supporting security and force protection planning and implementation, including creation of a Safe House for witnesses and court officials. While the United States is providing critical assistance to the IHT, this is an Iraqi court with Iraqi judges.

The IHT has commenced its second trial, known as the Anfal case. This case relates to a campaign in the late 1980s that resulted in the killing and displacement of over 100,000 Kurds in northern Iraq. Saddam Hussein was among the defendants charged in Anfal. Ali Hasan Al-Majid, better known to the public as "Chemical Ali," is also charged in this case, along with five other former regime members. The RCLO is presently assisting in the Anfal trial by arranging security for witnesses and trial participants. The actual trial is anticipated to conclude later this year.

The RCLO continues to assist in other ongoing investigations being conducted by the IHT, including the 1991 uprising campaign; the 1990-91 invasion and occupation of Kuwait; the former regime's systematic perversion of the Iraqi judicial system; and the draining of Iraq's southern marshes. The RCLO has also continued to assist the IHT in the investigation of a number of other cases, including chemical weapons attacks on Halabja, the 1983 Barzani case involving the execution of approximately 8,000 men and boys; the 1980's expulsion and mistreatment of Faylee Kurds; and the Wasting National Wealth case involving the Oil-for-Food Investigation.

Regarding the second part of the question on efforts of other federal agencies, as we have previously advised Committee staff, we sought and included input from other agencies, but we respectfully recommend that the Subcommittee contact the Department of State and other relevant agencies, should it require additional information.

5. Please provide a detailed description of efforts by the Department of Justice and other federal agencies to assist the International Criminal Court's Darfur investigation.

The ICC Prosecutor has not requested any assistance from the Department of Justice or from the U.S. Government in connection with the investigation. Of course, any response to a request for assistance to the ICC would need to be consistent with U.S. law, including the American Service Members' Protection Act.

6. In your written testimony, you stated:

In 2004, the U.S. State Department commissioned an Atrocities Documentation Team which on only a few weeks notice assembled a team of experienced law enforcement investigators and legal experts, including Department of Justice personnel. The team interviewed over 1,100 Darfurian refugees who had taken shelter in refugee camps in neighboring Chad. Based on the information elicited in those interviews, then-Secretary of State Powell was able to conclude and state publicly that genocide was occurring in Darfur.

Has the federal government shared any information you gathered regarding atrocities in Darfur with ICC investigators?

As noted above, the ICC Prosecutor has not requested any assistance from the Department of Justice in connection with the investigation, nor to my knowledge has the ICC Prosecutor requested any such assistance from other federal agencies. The report issued by the Department of State's Atrocities Documentation Team, entitled "Documenting Atrocities in Darfur," is posted on the Department of State's website and is publicly available.