

By Gwynne Dyer

From [Straight.com](http://Straight.com) | Original Article

Last week's arrest of the former Bosnian Serb military commander, Ratko Mladic, for the murder of 7,500 Muslim men and boys in Srebrenica in 1995, helped Serbia's campaign for membership in the European Union. But more importantly, it is a big step in the international effort to enforce the law against those who used to be free to murder and torture with impunity.

They were free to do so because the old rule was: kill your wife or your neighbour, and you will be punished for murder. Kill thousands of innocent people while in the service of the state, and you will get a medal. The state was above the law, and so were its servants.

That ancient tradition was first challenged after the Second World War, when political and military leaders of the defeated Axis powers were tried for war crimes and for the newly defined crimes of aggression and genocide. But it was an innovation with no followup—until the genocides in former Yugoslavia and Rwanda in the early 1990s forced the international community to act again.

In 1993 the United Nations Security Council set up the International Criminal Tribunal for former Yugoslavia. The following year a similar tribunal was created to investigate the genocide in Rwanda. But these were ad hoc courts to address specific crimes.

What was really needed was a permanent international court to enforce the law against politicians and officials in countries where the government could not or would not bring them to justice in the local courts. The Rome Statute creating the International Criminal Court (ICC) was signed by over 150 countries in 1998, and the treaty came into effect in 2002.

Since its creation, the ICC has opened three investigations at the request of the local government (Uganda, the Central African Republic, and Congo-Kinshasa), two at the request of

the UN Security Council (Libya and Sudan), and one at the initiative of chief prosecutor Luis Moreno Ocampo (Kenya). Most of the killers will escape its net, of course, but two dozen people have already gone to trial.

The ICC has no jurisdiction over crimes committed before it created, so Ratko Mladic will go before the International Criminal Tribunal for former Yugoslavia, but it's really all part of the same institution. The major complaint against this new international legal system is that it moves too slowly—but that could even be an advantage.

It took 16 years to track down and arrest Mladic, and his trial will probably take several more. That is a long time, but it also suggests a certain inexorability: they will never stop looking for you, and eventually they will probably get you. That has a powerful deterrent effect.

It is almost universally assumed by ordinary Kenyans, for example, that the intertribal carnage in Kenya in 2008 after the ruling party stole the last election was launched and orchestrated by senior political and military figures. Supporters of the leading opposition party, which was cheated of its electoral victory, began killing people of the Kikuyu tribe (most of whom backed the government), as soon as the results were announced.

The ruling party responded by using not only its own tribal supporters but also the army and police to kill opposition supporters, especially from the Kalenjin tribe. Over a thousand people were killed and more than half a million became “Internally Displaced Persons”.

Another national election is due next year, and Kenyans fear that it might happen again. However, three powerful men from each side, including the deputy prime minister, the secretary to the cabinet, and the former commissioner of police, have been summoned before the ICC to answer charges of “crimes against humanity”.

There will inevitably be a long delay before these men are tried, but that is actually a good thing, said Ken Wafula, a human rights campaigner in Eldoret, the city in the Rift Valley that was the epicentre of the slaughter. “Those who are supposed to incite will see what ICC has done, and they will not be ready to (stir up violence) for fear of maybe a warrant coming out.”

Many suspect that the Sudanese regime's acceptance of the overwhelming "yes" vote in the recent independence referendum in southern Sudan was similarly driven by fear among top officials in Khartoum that using force would expose them to the same kind of ICC arrest warrant that has already been issued for President Omar al-Bashir over the Darfur genocide.

So long as they stayed in power, of course, they would be safe. But what if the wave of democratic revolutions sweeping the Arab world comes south to Sudan? They would become hunted men, and probably be handed over to the ICC for trial. So they seem to have opted for the peaceful path instead.

Even after 16 years, the ICC got Ratko Mladic. It got most of the surviving organisers of the genocide in Rwanda. The likelihood of being pursued by the ICC represents a real risk for senior political and military leaders who contemplate using force against their own people. They may do it anyway—consider Libya, Syria, and Yemen at the moment—but it is nevertheless a genuine deterrent, and sometimes it saves lives.