

Criminal Law

Time for international justice

by Jocelyn Cockburn

On 4 June 1998 the Law Society of Scotland, in conjunction with Amnesty International's Scottish office, hosted a debate in Edinburgh on the need for a permanent International Criminal Court. The event attracted three speakers: Gavin Ruxton, senior prosecutor in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia; Anthony Brenton, Director for Global Issues at the Foreign and Commonwealth Office; and Andy McEntee, Chair of Amnesty International. Michael Scanlan, Vice President of the Law Society, chaired the seminar.

ICC: A NECESSITY

In 1948 the United Nations said 'never again' to the atrocities of the Second World War when member states subscribed to the Universal Declaration of Human Rights (UDHR). The UDHR contains 30 articles for the protection and promotion of fundamental human rights. Fifty years later, however, the record of many nation states is one of broken promises. From the killing fields of Cambodia to the massacres in Rwanda, and most recently Kosovo, the perception is that the international community is immobilised while systematic and widespread human rights violations are perpetrated. Although there has been progress in the protection of these rights world-wide, the reality is that people who have killed, raped and tortured on a massive scale are still likely to escape punishment. The creation of a permanent International Criminal Court will herald the end of this impunity and act as a deterrent to future violators as well as starting off the process of healing and regeneration.

The meeting at the Law Society was held in the run up to the Rome diplomatic conference (from 15 June to 17 July), where the nations of the world have gathered to debate the contents of and ratify a treaty creating an International Criminal Court.

THE OFFICIAL LINE

Tony Brenton is the senior official in the Foreign and Commonwealth Office

responsible for policy on the International Criminal Court and is in Rome for the conference. He outlined the British Government's position which, in line with their 'ethical foreign policy', wholeheartedly supports the creation of an International Criminal Court.

Mr Brenton then covered the main areas of concern:

- the powers and scope of the court;
- the list of crimes;
- the role of the Security Council;
- the independence of the prosecutor; and
- the overlap between the jurisdiction of the court and that of national courts.

He stressed the government's desire to see an effective court which is free from political pressures. On many of the points in issue the UK has a progressive stance and Mr Brenton confirmed that the UK has one of the more advanced positions among the main powers. He emphasised that safeguards would have to be built-in to monitor the development of the court and keep it focused on the ideals for which it was created. He also stated that safeguards would be necessary to protect the positions of states which act in 'good faith' like the UK. On the controversial issue of the role of the Security Council, the UK stance is that

the Security Council should not have the power to authorise investigations or prosecutions, although it should have the ability to delay a case. As regards the other contentious issue of the power of the prosecutor, the government does not agree with unfettered independence but will support either a pre-trial chamber or the need to have the support of one member state before bringing a prosecution. This would maintain the independence of the prosecutor from the Security Council whilst keeping safeguards to protect against the possibility of 'rogue prosecutions'. Mr Brenton asserted that compromise will

be the vital component in Rome. The reality is that a treaty creating a very strong and independent court will not be ratified by enough states to give it credibility as a world institution; on the other hand, a court which has few real powers will be seen as weak and a political instrument. Therefore a balance has to be struck.

AD HOC TRIBUNALS

Gavin Ruxton spoke from the perspective of having worked on both the Rwanda and Yugoslavia ad hoc tribunals, though as senior prosecutor he is now involved solely with the latter. He stated that although he and his colleagues have no official line on the creation of a permanent court, most are undoubtedly in favour of it. They are also aware that their work has been scrutinised as the debate on the viability of an international court has raged. Although there has been cynicism about the benefits of the ad hoc tribunals, Mr Ruxton emphasised the positive benefits which are now being felt. The trials are not just political showpieces but they demonstrate a real criminal court process. The ad hoc tribunal has emerged as a key player in the Dayton peace process. The Kosovo crisis which is unfolding now is showing all the signs which were evident in the early stages of the Bosnian troubles.

on the internet

<http://www.un.org/icc/>

The United Nations web site includes several pages devoted to the Diplomatic Conference on establishing an International Criminal Court. The latest news, daily agendas and press releases are all available.

He discounted the fear of 'rogue prosecutors' who would misuse their independence, describing it as 'hurtful': this has never been an element in the ad hoc tribunals despite the fact that the prosecutors have wide-ranging powers and, unlike national prosecutors, their role consists of information gathering as well as trying cases. However he did stress the differences: in the ad hocs the Security Council has already established the jurisdiction before the prosecutor's involvement, and thereafter the political

interference ends. An international court would not, of course, have the jurisdiction pre-decided. He stressed the need for the prosecutor to have independence in order to be effective but he also recommended that there be safeguards in place to ensure that the court evolves in a desirable way. In conclusion Mr Ruxton stated that the language of the treaty must be clear and that a court should be created which can compel non-party states. At the moment the lack of clarity of language show signs of creating an International Criminal Court in paralysis.

AMNESTY INTERNATIONAL

Andy McEntee is Chair of Amnesty International's Lawyers Network and Co-ordinator of the UK Coalition for an International Criminal Court. Amnesty's experience over the last 40 years is of human rights abusers who are not brought to justice by national courts, and the international community looking on powerless. It is not just a handful of countries which are offenders: Amnesty states that there have been serious human rights abuses in 150 countries throughout the world.


Mr McEntee praised the Labour Government's efforts in the field of human rights and specifically in relation to an International Criminal Court. He welcomed the UK's stance on the jurisdiction of the court, and positive input such as the enshrinement in the treaty of war crimes committed in

internal armed conflict as well as external conflicts; also the attention given to crimes of rape and sexual violence committed in armed conflict. Although non-governmental organisations have their own agenda as regards what they want from an international criminal court, there is an understanding of the need for political bargaining. For instance, whilst it seems somewhat out of place that something like the Security Council veto and the prosecutor's powers should be reserved as two sides of the ultimate bargaining chip, when they are so central to an effective court, it is understood that compromise will be needed to ensure agreement in Rome.

However Mr McEntee expressed some disappointment that on some of the most important issues the government has not decided on an exact position. For instance, although they support an independent prosecutor, the UK's failure to decide on what form this will take means that they lose the opportunity to take a lead on the issue. The UK is the only nation straddling the 'like-minded states' (the leading group supporting a strong court), the Security Council, the European Union and NATO and, in the view of Amnesty, they should see their role not merely as compromise-finders but also as leading creators of a fair, effective and just court.

WHAT NOW?

The key question now is whether an agreement can be made in Rome and, if

so, what kind of court will emerge from the diplomatic conference. Will it have the authority and independence to deliver justice and to punish the most heinous criminals? In the run up to Rome the 'like-minded states', have made significant gains in thwarting efforts to take the International Criminal Court off the agenda and in insisting on full and clear drafting. The situation still remains, however, that a minority of states are advocating positions that will seriously threaten the independence of the court and undermine its credibility. The meeting in Edinburgh showed a consensus of opinion that the time has come to create an International Criminal Court and the government has an important role in Rome. The world has a unique opportunity to establish an institution which will provide justice where there has been none, act as a deterrent to would-be perpetrators of heinous crimes, and which can begin the healing process in areas where human rights violations have led to unimaginable suffering. 

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