

Monday, 8 June

MURRAY HUNT

Legal Adviser, Joint Committee on Human Rights
Scrutinising legislation for human rights compatibility

Monday, 15 June, 09.00-17.00

Conference organisers

PROFESSOR ERIKA SZYSZCZAK

Centre for European Law and Integration, University of
Leicester

DR TARJEL BEKKEDAL

Centre for Research on Markets, Innovation and
Technology, Institute of Private Law, University of Oslo

PROFESSOR MADAS ANDENAS

University of Oslo and IALS

Government and services of general interest in a global world

Tuesday, 16 June, 08.30-15.30

Workshop organisers

PROFESSOR ERIKA SZYSZCZAK

Centre for European Law and Integration, University of
Leicester

DR TARJEL BEKKEDAL

Centre for Research on Markets, Innovation and
Technology, Institute of Private Law, University of Oslo

PROFESSOR MADAS ANDENAS

University of Oslo and IALS

Workshop on SGEIs, the European social model and free movement

Tuesday 23 June – Thursday 25 June, 09.30 – 17.00

W G Hart Legal Workshop 2009

(see page 9 for further details)

IALS News

Conference report

War Crimes – Retrospectives and Prospects, February 19-21, 2009

The intention of this conference was to bring together, in a small forum, a group of individuals with real expertise and insights in a range of areas. Originally a one-day colloquium had been envisaged, but when the call for papers resulted in a plethora of important and also wide-ranging options, the conference committee (Judith Rowbotham, Lorie Charlesworth, Michael Kandiah and Belinda Crothers) agreed that we had to expand our vision in order to accommodate as many as possible. We took the gamble that such a diverse mix of experience and expertise, bringing together academics (lawyers, historians, anthropologists, political scientists) with practitioners and professionals (judges, barristers, NGO workers, researchers etc) would work: that brought together in a conference format but without packing the conference with large numbers of delegates, real debate would ensue and that commonalities, examples of good (and bad!) practice, and even – ambitiously – strategies for moving forward would emerge. It did work! The result was a lively, stimulating, engaging set of debates emerging from these encounters between fine minds and the common passionate determination to make a difference.

The conference opened with a challenging plenary from Lesley Abdela. Drawing on her experience in the immediate aftermath of conflict in Kosovo, Bosnia, Sierra Leone, Iraq, Afghanistan, Aceh and most recently, Nepal, Lesley talked of the importance of making the

identification and definition of war crimes, and their subsequent prosecution, more than an admirable concept; and into something which can actually help in post-conflict reconstruction in such societies. Her particular emphasis was on gender as a key factor in reconstructing citizenship, and she talked of the issue of rape, and its wider implications for the legal process. That was a theme which regularly re-emerged during the conference, as part of the debate over whether it was possible to identify some international code, and even more importantly, language, of rights which could unite all the participants in war crimes trials. Defining the nature of a war crime, in the cultural spaces of the local/national and the international was a key problematic: Lesley pointed out it was only recently that rape had been identified formally as a war crime, and this identification was hedged around with problems. This led to another debate much discussed during sessions, breaks and dinners in the conference: is it useful to talk of the “victims” of war crimes, certainly when we are talking of the living? Are they not offered a better respect when the terminology of victimhood and its implications are avoided? Might “witnesses” or “survivors” be a better set of labels, especially in terms of their ability to reconstruct themselves as individuals and communities in the post-conflict world? Debate over this was a sustained trope for the remainder of the conference.

Another challenge was looking beyond the rhetoric to begin to find answers to, the question of who was undertaking the war crimes trials and on whose behalf? The debate threw up another important point: that the politics of justice are complicated and it is not always easy

to apportion “blame” or the label of being “in the right”; partly because of the complications of the ways in which treaties are written (war crimes such as rape may continue after a treaty is concluded, but they no longer acquire the label and so are not considered treaty violations). There is also the issue of what should be the role of the International Criminal Court: should it involve itself in post-conflict resolution, or was that aspect of war crimes tribunals for other agencies and agendas? Was it possible, or desirable, to draw a line between the work of war crimes tribunals, especially where the ICC was involved, and other agencies (local, national and international)? And what kind of justice was being sought? How could, and indeed should, international jurisprudence trickle down into domestic courts? Should the ICC have a role in this? It was agreed that in many ways, “justice”, certainly as it was perceived by those who suffered from or were affected by war crimes in some way, was often contained in the interstices of procedure, and that was a real complication.

By the end of the opening session, it was plain that one of the themes that would regularly emerge was the challenge to academics to find ways of providing work which could be used to inform and support war crimes initiatives, especially in the courts. A challenge for practitioners and professionals in the field was finding the best way of establishing good practice, respecting local differences while supporting the concept of international law (and so characterised by a fundamental agreement on key constituent elements), and an international code of practice that respected – even gave primacy to? – the national dimension. It was accepted that there were many (too many?) different jurisdictions and court processes when it came to war crimes tribunals. How did this contribute to, or work against, the fight to establish good practice?

For many, a core issue was where should prosecutions take place? Were hybrids between the national and the international tribunals the way forward? This was a particularly crucial issue given the time factors and the geographical realities of distance. The economic dimension also came up as a regular theme, but we all felt it to be a shortcoming that we had not had specialists in this aspect come forward. It was pointed out that historically, and even today, one of the things which was generally carried on during a war was trade: today it was likely to be illegal rather than legal trade, as in the case of the Mafia in Bosnia, but that was a dimension that needed to be explored further.

Peter Rushton and Gwenda Morgan revealed the historical origins of attitudes which colour a state’s practice when dealing with war crimes. They explored the perceived importance of an observance of legal protocols during the American Revolution/War of Independence, which found real echoes with the strategies adopted by defence lawyers as depicted in the powerfully-delivered panel featuring Joe McMillan, Michel Paradis and Melissa Epstein Mills, on

prosecutions in Guantanamo Bay, and the prosecution of US servicemen for misconduct during the Iraq war. Equally, the historical dimension demonstrated that it was the label of “war crime” that was new: many of the crimes now encompassed under that banner were already well-established as atrocities in war, as in the case of rape. It was very impressive to hear the range of papers on Bosnia also; in particular the panel based around the experiences of the Prosecutor’s Office and the UNDP in Bosnia-Herzegovina. Aided by their Chair, Shireen Fisher (who, until 2008, was an International Judge there), Toby Cadman, Iva Vukusic and Alma Dedic provided an absorbing set of insights into the developments there.

As well as Bosnia, attention was given to a range of African experiences, and to the lesser known events in Cambodia (Silke Studzinsky brought us the latest news on the trials just beginning there) and South America: as well as Peru, where Jose Pablo Baraybar reported, the resounding closing plenary delivered by David Sugarman testified to the importance of a global, as well as a historical, comprehension in order to understand the impact of war crimes, especially when war crimes tribunals are not an automatic resource. One of the great regrets of the conference was that the overly-complicated visa system now operating for entry to the UK meant that one speaker on African experiences in Uganda that many were very eager to hear was not able to be present: Lawrence Dulu Adrawa of the African Development and Peace Initiative.

Despite the horrors that characterise war crimes, it has to be commented that from the debate following the opening plenary on, one very positive aspect emerged organically and was sustained during the various papers and discussions, becoming a conference trope. That is the extent to which so many individuals professionally involved in the aftermath of war crime, including investigators, judges, lawyers and others were passionately engaged in, and committed to their work beyond “normal” professional duties, in ways that commanded the enormous respect and admiration of the conference organisers. The range and scope of the commitment demonstrated, in a humbling manner, that original discipline and formal qualifications need be no bar to involvement, witness the role played by Konrad Kweit and his team of historians in bringing Lithuanian Nazis to trial in Australia; something that was also emphasised by David Fraser’s challenging plenary. It was not just the speakers: many of the delegates present had tales to tell which demonstrated the same energetic dedication. Such levels of commitment require broader public recognition.

The creation of a synthesis – a manual – of what makes a successful tribunal was identified as a genuinely urgent need. Whenever a new court is created, it has to create a legal culture for itself – a reference guide of what has worked elsewhere could help to avoid the repetition of old mistakes. In this sense also, speakers such as Cissa Wa Numbe asked if, in the light of the ICC and international

tribunals generally, it was possible to say that these courts were appropriately accountable and were identifying the people who needed to be prosecuted. How far were such courts located in, and focusing on, the weaker states, the economically poorer and less powerful entities and individuals? Was it necessary, if a genuine international justice was to be achieved, to identify a second category of war crimes and criminals: those who aided or were in some way complicit in the committal of war crimes; those whose aid or compliance was essential to the performance of war crimes without them being actually the perpetrators? It should not matter, Cissa Wa Numbe challenged, who the perpetrators were, in terms of status, nationality or prominence: if they could be identified, should they not be prosecuted? All injustice needed to be dealt with. And as Jose Pablo Baraybar insisted, given the numbers (of victims, witnesses, perpetrators) involved in so many modern war crimes, there was also a problem with the retributive justice process of the law invoked in war crimes tribunals. He urged the need to involve aspects of civil society in the delivery of justice to those awaiting it in the aftermath of what he described as a “permanent” crime for which society demanded justice, if it was to heal. The conference finished on a high note with the concluding plenary from David Sugarman, reflecting through the example of the trope of memory in Chile on many of the themes and issues brought up elsewhere in the conference.

In the concluding Round Table, several key points were held by speakers to have been identified during the conference. First, it is now time to have a review of the existing war crimes tribunals, including the ICC, and to question the extent to which there is a rule of law which is standard to them. It seems to be agreed by most there that distant courts are not the answer in the majority of cases of

trials for war crimes: there is a need for these to be as local as possible, which also raises issues of the compositions of juries in national and international tribunals. It is agreed that there needs to be a focus on other institutions and what their role in the creation of post-war justice should be – including states and bodies such as the EU, the USA, NATO and the UN. It was suggested that while there was much discussion from them, there needed to be talks about them in this context.

In organising this interdisciplinary conference at the Institute of Advanced Legal Studies, facilitated by IALS, along with fellow institutions in the School of Advanced Study at the University of London (Centre for Contemporary British History and the Institute of Commonwealth Studies) SOLON owes a great debt to Belinda Crothers at IALS for her practical organisation (without her, it would never have happened!) – but once again, we return to the reality that we owe a great debt to our speakers and participants, many of whom made huge efforts and considerable sacrifices to enable them to get here, and who have now returned to work that is neither a sinecure nor carries a guarantee of personal safety. It was they who made the conference the humbling, worrying but also at times inspiring, call to action that it turned into.

Thank you!

Judith Rowbotham, Michael Kandiah, Lorie Charlesworth*

**A fuller version of this report is available on the CCBH and the SOLON websites*

Cambridge International Symposium on Economic Crime 2009

The 27th Cambridge Symposium takes place at Jesus College, Cambridge from August 30 – September 6. Entitled “The Enemy Within – internal threats to the stability and integrity of financial institutions”, this year’s event focuses on the extent of serious risks from inside institutions as a result of penetration and internal misconduct. Particular attention will be given to initiatives designed to address the problems resulting from corruption and fraud.

Further details are available from:

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