

Moderator's Comments:
Role of International Criminal Court and Ad-Hoc Tribunals
Bruce Broomhall¹

Before we let you rush to the microphone with questions, I'd like to make a few remarks about two little themes. One of them is about what Christopher Hall was saying and partly what Diane was saying about the shape of things to come. Within a few months of the Rome Statute emerging fresh from its diplomatic conference in mid-'98, Pinochet was placed under arrest in London. People were saying, 'well, when we get this ICC up and running we won't need universal jurisdiction anymore; let's hurry up and get this universal jurisdiction out of the way'.

That point of view was based on a misunderstanding of how the Rome statute was going to work; people are clear about that now. The ICC is an incentive for our governments to change their laws. An incentive for state officials to end impunity within their jurisdictions, in particular, but also with respect to other jurisdictions. It is not going to be possible for the ICC to do everything itself, we'd be looking at an annual budget of 100 million dollars or thereabouts. We're not looking at more than a relative handful of cases before the ICC every year. If the home state, the territorial state, or the national state of the crime is unable to deal with the cases effectively and fairly, then its going to be a choice between stark impunity and action by other national courts. And that means universal jurisdiction quite often. So I think we are at a vitally important historical stage where the window has opened for legislative reforms, for programs of judicial, prosecutorial and public awareness-raising, and to move the process forward in as many countries, in as many regions and in as many legal system types as we can over the next couple of years.

As Christopher mentioned, we've seen that Canada and New Zealand have put legislation with universal jurisdiction on the books. The United Kingdom is in the process of passing legislation. A number of other countries are coming along with plans to do the same. We've faced a lot of problems as this process takes place around the world. I think the biggest single problem is simply a lack of coordination. As we know from a number of our speakers today, we have a lot of people who are passionately committed to seeing justice secured in countries around the world. And there are people who are extremely well informed about individual cases or about a whole range of cases. What we don't have yet is a means of really making our efforts effective around the world in getting the laws placed and then running the cases. And this is where we need to establish a real synergy between the international advocates of accountability, the local advocates of same, and the governmental, non-governmental, and inter-governmental

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players in the field; and we need to find a way of really creating the kind of critical mass and the working methods that are really effective.

Reed Brody's work in the Habré case in collaboration with the Senegalese, with the Chadians gives us some sense of the shape of things to come. That's the kind of non-governmental equivalent of the hybrid tribunals that Diane Orentlicher was talking about and we are going to see a lot of those. As the ICC comes around and says, "Hey were you unable to do the job?" These hybrid tribunals are going to appear and we're going to need the international-local interactions between governments, non-governmental organizations, academics and lawyers to bring impunity effectively to an end in individual cases.

So let me just give you one example: the United Kingdom. In the United Kingdom, the bill that sits in front of Parliament now has good qualities and bad qualities. It doesn't have the kind of universal jurisdiction we would like. But the process there shows how contingent things are. NGO's including Amnesty and The Lawyers Committee, Human Rights Watch and others, pushed to get universal jurisdiction into the legislation. Positive statements were made in that direction in the House of Lords. The Attorney General expressed some openness to looking at the issue of including universal jurisdiction, and then politics intervened. This was in the form of national elections that were predicted for April or May.

We saw a couple of possibilities. One of them was that maybe the legislation would die before the elections, and if it did we would get another chance after the elections, and we thought, "Yeah, universal jurisdiction is pretty controversial in the UK and maybe if we wait until after the elections we'll have a better chance of getting it. Maybe it would be better if the legislation died before the election and that way we can push for it afterwards." The current crisis over hoof and mouth disease have put an end to that grand strategy and we find that because the election is likely to be delayed, the legislation for the ICC will soon be passed and we won't get universal jurisdiction.

It's those kind of weird contingencies that we are slave to as we try to get these laws amended in country after country. We have a task of political management, we have a task of awareness raising, and in every situation, the more we can bring knowledgeable people to the table and the more pressure we can bring to bear, the better off we are going to be. There's a real need for coordination as we go forward.

The other thing that is vital was raised this morning by our first speaker, Dr. Garces. The symbolic significance of being in Washington, the real importance that the United States is going to have with any effective system of international justice. Chris talked about the shortcomings of the Rome Statute's jurisdictional scheme. The shortcomings were put in there for the same reason that a lot of the shortcomings in the Rome Statute were put in there. To increase the likelihood that, states being what they are, they will actually sign and ratify this instrument. On the whole it seemed a good gamble. We're well on the way to entry into force, which we predict within a couple of years, by the end of 2002. And the Court is going to have some real promise of effectiveness and indeed more

countries from more regions are signing on than some feared would be the case when we first saw the package at Rome.

An important proviso, however: it's still the countries in which the atrocities take place or by the nationals of which the atrocities take place, that are going to define the jurisdiction of the ICC. Ultimately, we are also going to need some enforcement backup, some pressure to give teeth to the ICC where it does have jurisdiction, and to refer cases to it where it does not. In either case, the Security Council is ultimately going to be important to the ICC. But the Security Council has been unreliable in supporting the ICTY, which was its own creation, and with the ICC, where the United States has been so unhelpful with the process in the last couple of years, we have even greater need of the Council. We're not going to see the Security Council in support of the Court at least at the earliest stage. Now, I for one am hopeful that we will see the United States eventually behind the Court. Be that as it may, it's a long way off. It is still crucial that the United States be pressured from every angle to become more positive about international justice. It doesn't have to be the ICC, it can be Sierra Leone, it can be Cambodia, it can be East Timor, it can be the torturer living in Brooklyn, or the criminals living in Florida. But whatever people are doing to draw attention of U.S. congresspeople, U.S. government, U.S. media, to the need for the United States to support accountability for these crimes, the better off this whole system is going to be 10 and 20 years down the road. In creating the system, in establishing coordination, in getting the U.S. on board, it is vital to remember that we have a window of opportunity now. And as our speakers have said today we've got to take advantage of that window if we want to be reaping the fruits of it 20 years down the road.

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