

CNN INTERNATIONAL, Q&A

12:30 PM Eastern Standard Time

February 18, 2003

Transcript # 021801cb.k19,

SHOW, NEWS; INTERNATIONAL,

Q&A, Sue Ellicott, Phil Shiner, Michael Scharf, Andrew Neil, Jim Clancy, Zain Verjee

...

CLANCY: All right. Sue, stay right there. We're going to move on here just a bit. The opposition to Prime Min. Tony Blair has taken a new turn with what may seem to be a farfetched idea, and that idea, taking him to criminal court.

VERJEE: But some lawyers in the U.K. think it's a real possibility.

CLANCY: One of them, Phil Shiner. He's a lawyer/solicitor with Public Interest Lawyers, a law firm and an advocacy group.

VERJEE: However, Michael Scharf, a professor of law and director of the War Crimes Research Office at Case Western Reserve University in Cleveland, Ohio has a different opinion. He served in the Bush, Sr. and Clinton administrations.

CLANCY: Phil, can you explain how this is possible? How Tony Blair could possibly end up before the criminal court, the international court?

PHIL SHINER, PUBLIC INTEREST LAWYERS: Well, yes, the big change in international affairs is what's happened since July 2002, whereby we now have the International Criminal Court.

So we know that if there was a repeat of the bombing attacks in 1991 Gulf War, on Kosovo or in Afghanistan, which were by nature indiscriminant because of the height of those attacks or the different types of weapons used, such as cluster bombs or fuel air explosives, or the bombing of electricity supplies -- we know that those things are in breach of Geneva Convention provisions which prohibit indiscriminant attacks on civilians.

And what's interesting about the Rome (ph) statute is that the definition of war crimes brings within it those type of indiscriminant attacks.

So what we plan to do here in the U.K. with colleagues around the world, in Australia, in the United States, in Canada, in Italy, is we are going to try the issue of whether there have been violations of those Geneva Convention provisions if Britain gets involved in a war. And if there is, we will report to the prosecutor in the Hague and we will urge that he use the powers that he has under Article 15 of the Rome (ph) statute to initiate his own investigation.

He doesn't have to wait for someone -- for a state to approach him. He can take the matter into his own hands, and we will urge him to do that, and then we'll work with him to put to him all the evidence that we have.

VERJEE: OK. Michael, let me ask you this: is this a bit of a stretch here? I mean, can you envision a scenario where Tony Blair is taken to the war crimes tribunals of the International Criminal Court and tried for war crimes?

MICHAEL SCHARF, CASE WESTERN RESERVE UNIV.: Well, Zain, that would be unlikely in the extreme.

The problem that has not yet been discussed on this program is that Article 8 of the Rome (ph) statute says not just any ordinary war crime can come before the International Criminal Court, but only the most serious war crimes that are part of a policy or plan. Now, I think if you look at the experience of the 1999 NATO intervention into Serbia, it gives you a good sense of the benchmark for that kind of qualification. During the NATO intervention, as you already heard today, there were allegations that the NATO countries had violated the laws and customs of war. There was a movement very similar to what is being discussed today to have the prosecutor investigate.

And there was a 110-page investigation report that looked at all of the different things that happened in the NATO intervention and decided that there were no indictable offenses.

Now, if the NATO intervention was the test case, it is unlikely that things are going to happen in Iraq or Baghdad that far surpass what happened in the 1999 intervention. And again, recall that the Rome (ph) treaty has a higher threshold than the Yugoslavia tribunal did in 1999.

CLANCY: Phil Shiner?

SHINER: I can't agree with that.

What happened in the 1991 Gulf War is qualitatively different from the matters that that committee investigated, which was essentially confined to the bombing of the TV station. In '91, there were tens of thousands of civilians killed directly or indirectly. For example, the bombing of electricity supplies meant that hundreds of thousands of children died through diarrhea because the water sanitation plants stopped working. So the Gulf War situation.

VERJEE: But, the point -- the point here, Phil, is that there is no precedent that's been set. I mean, Michael has just outlined something where they tried to make that happen and it failed.

SHINER: Well, the fact there is no precedent because we only now have this court being setup means that nobody, with all due respect to the professor there, nobody can say how

this tribunal -- how the International Criminal Court will work, because we haven't yet seen it in action.

What we do know is that certain methods of attack and systems -- weapons systems -- are in breach of Geneva Convention provisions and are therefore war crimes. No one can say that Tony Blair couldn't be held accountable to the Hague.

VERJEE: Michael.

SCHARF: Well, it's true that this has to be tested before judges. Several of the judges that were recently elected for the new International Criminal Court are the same judges that have been sitting on the Yugoslavia tribunal.

And it's also true that during the 1999 intervention, the United States and the United Kingdom were subjected to the jurisdiction of that international tribunal. They investigated the crimes. I am sure that the type of tactics that are going to be used in Baghdad are going to be similar to what was tested just three years ago. Now what you have to remember is that it's true, all is not fair in love and war. There are war rules, but.

CLANCY: But, Michael, I mean, this sounds like an attorney that says, you know, hey, listen, there's always going to be some women and children - - bombs away. Isn't it time to hold people accountable?

SCHARF: OK. Well, I am an attorney who has devoted my life to prosecuting people that are involved in war crimes, so that's not at all, I think, a fair qualification. But, again, it is also true that when you are prosecuting a war, there is collateral damage, and as long as the people in NATO, in the United Kingdom, at the Pentagon, are very conscious of trying to make sure that they are targeting military targets and not civilian targets, even if there are some civilian deaths, that is not going to bring Tony Blair into the dock.

CLANCY: Phil.

SHINER: We are determined that it will do just that.

If there are indiscriminate attacks on civilians, if there are the use of weapons systems like cluster bombs or fuel air explosives, if there is a repeat on what happened on the road to Basra, when there was no (UNINTELLIGIBLE) given, all of those things -- we will do our level best in this international coalition of lawyers and NGOs to make the leaders of the U.K. government accountable.

I do think it's very important that the U.K. government listen and take seriously this message.

I have served them with letters before action, but they need to know that we are deadly

serious about it, and we intend to bring them to dock, into the dock, in the Hague, if we possibly can, if there is a repeat of what happened in 1991.

SCHARF: Let me through in one other consideration that makes it very unlikely that you'll be successful, and that is that the International Criminal Court, as a new international criminal institution, is going to be very cautious in its early years. It is not going to want to bite the hand that feeds it, which are going to be the Western powers that have been most supportive to its creation.

Just like the International Court of Justice was very deferential to the major powers for its 40 years, all the way until 1986 in the Nicaragua case, I think it's going to be 40 years before a Tony Blair or George Bush has to worry from anything with respect to this new International Criminal Court.

VERJEE: So, in other words, are you saying that even if a case was filed against Tony Blair, it's not necessarily for sure that the International Criminal Court would even take that?

SCHARF: There are several hurdles, and one of them, under Article 15, is that the prosecutor can't just issue an indictment. He has to convince three judges that the case is prosecutable under this very high threshold, that it's not just an ordinary war crime, but a serious war crime, part of a policy or plan.

So there may be accidents during this war -- there may be situations that would qualify as war crimes, technically, but those aren't going to be sufficient for this court to exercise jurisdiction in this case.

CLANCY: Phil.

SHINER: We would say, in this context, the U.K. government would be a repeat offender. They got away with it in '91 because there was no International Criminal Court. But they now know, they're on notice, as to what they can and they can't do, and they know that their attacks must be targeted and they must be proportionate, and they must be focused on what the threat, they say, is, which is the alleged centers of weapons of manufacture of weapons of mass destruction.

It cannot be that that force has anything to do with regime change. The force.  
(CROSSTALK)

CLANCY: Phil, you say they got away with it, and everything you talk about is serious. But you say they got away with it. There was an investigation. I talked to Gen. Wesley Clark. He was with NATO. He got investigated for war crimes. He supports the International Criminal Court, but he was not held accountable, because he didn't have culpability. He didn't do it on purpose. He didn't order the flights over -- he didn't order them to cause civilian casualties. Isn't that a problem for your case?

SHINER: No. The principle of complicity means that we can bring the leaders of the U.K. government to book.

If previous governments have gotten away with it, that's a reflection of the fact that the Rome (ph) statute hadn't come into force. But from July 2002, the world has changed, thank goodness, and we now have an International Criminal Court. And the coalition that used force against Iraq, if that's what happens, must take into account that the world has changed, and that they cannot get away with the type of force that they've used previously.

SCHARF: And just to clarify another matter, if there are situations where individuals on the ground commit war crimes, they commit rapes, or aviators drop bombs where they shouldn't, then all the United Kingdom has to do is a legitimate investigation, as has happened in countless times in the past, from the Lt. Callie (ph) case in the United States, up until the recent Canadian people who were injured in Kosovo.

And as long as there is an investigation, then under the statute for the Rome (ph) treaty, there cannot be culpability for the leaders like Tony Blair.

VERJEE: All right, we'll leave it there. We have to leave our discussion there. Phil Shiner, Michael Scharf, thanks a lot for talking to us here on Q&A. Thank you.

SCHARF: My pleasure.

SHINER: Thank you.