

Reaction to Helena Cobban's "Think Again: International Courts"

In the March/April 2006 issue of Foreign Policy, journalist and transitional justice expert Helena Cobban asks us to "abandon the false hope of international justice." Cobban cites instances where the UN tribunals for the former Yugoslavia and Rwanda failed to achieve peace, advance human rights, and deter future atrocities. She claims that "they have squandered billions... and ignored the wishes of the victims they claim to represent." Though persuasive and passionate, many of Cobban's arguments fail to recognize the important precedent the tribunals have created, or to differentiate between the tribunals and the International Criminal Court (ICC). The following provides a breakdown of counterarguments to her assertions:

- *"International Courts Help Achieve Peace" and "Advance Human Rights"*

After violent armed conflicts or other massive assaults on civilian populations, many states or societies remain mired in cycles of violence and retribution. Prosecuting individuals for atrocity crimes can accord justice for victims and help create respect for the rule of law. Prosecutions counter attempts to blame nations or ethnic, religious, or other groups as a whole for the crimes of the individuals who planned and fomented them. Fundamental human feelings, morality and values demand that these extreme atrocities be described, proclaimed, condemned and published not only, although particularly, for their victims, but also for the common humanity which they have so profoundly affronted and debased.

While justice cannot exist in a vacuum, it also must not be ignored in reconstituting societies and the lives of their members. The tribunals and the ICC work to support a broader political project to rehabilitate conflict-torn societies. They complement traditional justice mechanisms, amnesties, humanitarian relief efforts, peacekeeper deployments, etc., to establish a coordinated effort to stabilize countries in conflict.

Most important, the tribunals and the ICC therefore encourage reconciliation among the parties. Trials acknowledge and condemn the suffering of victims and establish an accurate historical record of what actually happened during the years of bloodshed, which may otherwise be denied or distorted by propaganda. Such a record helps people understand, and eventually come to terms with, the past and each other.

- *"Today's International Courts Are the Legacy of Nuremberg"*

The tribunals and the ICC have built upon the legacy of Nuremberg. Not only have the Yugoslav and Rwandan tribunals incorporated the basic crimes prosecuted at Nuremberg, they have also established rules of criminal procedure and evidence and precedents that will be used in trials in the future, particularly at the ICC.

Cobban, like many critics of international courts claim that unlike the swift justice achieved at Nuremberg, the costs and long delays in recent international criminal trials outweigh their usefulness. Such arguments fail to comprehend the inherent complexity of trying former leaders of tyrannical regimes, primarily due to the nature of the offenses being prosecuted and the post-conflict political environment tribunals operate in. The criticisms also ignore the effectiveness of

the Rwandan and Yugoslav tribunals; both have sentenced and imprisoned some 51 atrocity criminals including very senior officials and at least one former prime minister. The ICC will also reduce trial proceedings and costs as compared to the tribunals; the ICC's new pre-trial chamber will significantly shorten the length of proceedings, as motions and pre-trial matters can be settled before a case actually begins.

Moreover, the credibility and effectiveness of the tribunals and the ICC ensure that they will improve on the trials at Nuremberg to ensure full rights and fairness for the defense. This cannot be ignored for the sake of the expediency Cobban recommends.

- *“Victims of War Crimes Demand Prosecutions”*

Victims of atrocities generally demand justice. As a 2005 International Center for Transitional Justice survey of residents in northern Uganda discovered, 76% of respondents said that those responsible for abuses should be held accountable for their actions. When asked of what should happen to leaders of the LRA, 66% were in favor of punishing them, while only 25% suggested measures such as forgiveness, confessions to the community, and compensation. Of those who had heard of the ICC, a majority believed that the court would contribute both to peace (91%) and justice (89%).

Moreover, the ICC allows victims to become parties to proceedings. It is not merely the prosecution and defense who will be battling cases in court. Victims can make direct submissions to the Court, as well as through counsel, and make applications for reparation. This corrects the failure of the previous tribunals, where victims were mere fact witnesses who were only called by the parties to give evidence in the proceedings.

- *“Giving Amnesty to War Criminal Encourages Impunity”*

Amnesties and prosecutions are not mutually exclusive. Because of their mandates and limited resources, the tribunal and ICC prosecutions can only target the most senior perpetrators with a unique responsibility in the atrocities committed. Followers of such leaders may be prosecuted by national courts, undergo traditional justice procedures, receive amnesties, etc. Societies and governments must decide the appropriate course of action against lower level offenders.

- *“War Crimes Prosecutions Deter Future Atrocities”*

Since the ICC complements national criminal jurisdictions, it promotes the rule of law through the mere threat of involvement. States will be encouraged to investigate and prosecute atrocity crimes. If states do not act, the ICC may find it necessary to pursue its own investigations and prosecutions. Whether the Court will be successful in deterring violence may be difficult to determine in the short-run. However, assessments will be made on the Court's effectiveness in providing deterrence through balanced justice once trials commence in the near future. As experience makes it possible to evaluate the Court's contribution to deterrence, it may prove important that for leaders, atrocities are crimes of calculation, not of passion.

The ICC also improves on the tribunals' work by investigating and conducting proceedings while atrocities are being committed. The Court's actions will remove the most senior perpetrators, ensuring that those orchestrating the violence will not do so in the future. Trials will isolate and incapacitate criminal leaders so that they can be removed from active political participation. Future tyrants will also think before they act, debating the usefulness of committing atrocities in the service of their perceived interests.

In addition, the Court's permanence allows for its rapid ability to act, without losing precious time in formation. This allows the Court to create long-standing relationships that aid in the ability to move quickly to address violence as it occurs and correct past mistakes in conducting future cases.

- *"The World Needs the International Criminal Court"*

The ICC was established to meet the worldwide desire for a permanent institution that strives to ensure that those most responsible for massive, widespread and systematic atrocities be prosecuted. The world community in 1994 and today was, and still is, determined that those who conceive of, plan, lead, foment and mislead others to engage in the ultimate in atrocities must be called to account and to justice. The quickness of the Court's implementation, from the adoption of its statute in July 1998 to the treaty's entry into force on July 1, 2002, attests to the immense global desire for the ICC's establishment.

The Court is fully operational, with three active investigations in Darfur, Sudan, the Democratic Republic of Congo (DRC), and Northern Uganda, and several other situations are under analysis by the Prosecutor. Five arrest warrants have been issued against leaders of the Lord's Resistance Army rebel group in Uganda, and trials are expected to start in the Ugandan and DRC cases this year. The Security Council recognized the importance of the Court's work with its referral of the Darfur situation to the Court last year.

Written By AMICC Deputy Convener, Wasana Punyasena