



Lawyering in the international community

International law – a backwater? **Christopher Greenwood QC** notes a sea change, and wider prospects for future lawyers.

A generation ago the handful of international courts that existed were considered as a backwater. The International Court of Justice decided no cases at all for several years and the idea that a head of state stand trial for crimes against humanity would have been regarded as fanciful. But the world changed dramatically in the 1990s and the role of lawyers in the international community changed with it.

These changes are nowhere more apparent than in the International Court of Justice in The Hague. Its 15 judges – one of whom, Judge Rosalyn Higgins, was elected to the Court from the Chair of International Law at LSE – deal with more, and more varied, cases than ever before. The last few years have seen them resolve territorial disputes between Cameroon and Nigeria, Qatar and Bahrain and Indonesia and Malaysia. They have pronounced on US military action against Iran, the construction by Israel of a wall in the occupied territories and the death penalty in the United States.

Indeed, the whole United Nations has undergone a sea change. The Security Council, which adopted only 650 Resolutions in its first 45 years, has adopted more than 900 in the last 15. Many had significant legal implications: the trial of the Lockerbie bombers, the suppression of terrorism, the crafting of economic sanctions and the creation of criminal tribunals for Yugoslavia, Rwanda, Sierra Leone and Cambodia.

The creation of the World Trade Organisation has not only had enormous economic implications, it has also given birth to a whole legal apparatus by which trade disputes that might once have paralysed economic relations between, for example, the United States and the European Union, are now resolved through legal means. The entry into force of the United Nations Convention on the Law of the Sea led to the establishment of an International Tribunal for the Law of the Sea based in Hamburg and presided over by Judge Dolliver Nelson (LLM 1964, PhD 1969) a visiting professor in the Law Department.

The notion that individuals might be called to account for international crimes – a principle recognised since Nuremberg but largely ignored for the next 50 years – has been given new life by a series of international criminal tribunals before which the former president of Serbia and prime minister of Kosovo, among others, are currently standing trial. The International Criminal Court, now operational, is a standing court with jurisdiction over international crimes.

Another growth area has been in the field of investment arbitration. At one time if a government seized the property of a foreign investor, the investor's only remedy was to turn to his or her own government. Over the last three decades some 2,000 bilateral investment treaties have entered into force, most of which provide for investors of one of

the states to bring claims directly against the government of the other. The result has been an enormous growth in work which straddles the divide between private commercial law and public international law.

These developments have not been free from controversy. Opponents of globalisation, for example, attack the investment treaties as a charter for global capitalism. The United States has famously stood aside from the International Criminal Court, but many states and communities are hostile to international tribunals trying their compatriots. The increased role of the European Court of Human Rights, within the European regional system, has attracted considerable controversy in some European states, including the United Kingdom. Overall, however, the gains undoubtedly outweigh the losses by taking us closer to an international society in which the rule of law is a reality. And for today's lawyers, and future LSE graduates, the tasks have never been so varied. ■



Christopher Greenwood QC

is Professor of International Law at LSE and convener of the Law Department. He is also a practising barrister and has appeared as counsel in front of many of the courts and tribunals discussed in this article. He is a member of the Panel of Arbitrators for the Law of the Sea Convention and the International Centre for the Settlement of Investment Disputes.

Law highlights 2005

● An LSE moot team (pictured right) represented the UK at the largest and most prestigious international moot court competition this year.

The 2005 Sherman & Sterling International Law Moot Court competition was held in Washington DC this spring, with teams participating from 104 universities from some 60 different countries. The LSE team, Preeti Bhagnani, Sui-Jim Ho, Victoria Ho, Julian House and Richard Reynolds, as well as their coaches, Sarah Hansen, Virginia Mantouvalou and Heba Morayef, earned the right to attend by winning the UK Philip C Jessup International Law Moot competition, and the Fitzmaurice Cup. Victoria Ho was recognised as best oral advocate in the UK finals.

In the international competition, the LSE team was placed fifth in the preliminary rounds, to reach the octa-finals, with Preeti Bhagnani recognised as the ninth best overall out of more than 400 competitors. The overall competition was won by the University of Queensland.

Since its inception in 1959, 115 countries and special jurisdictions have participated, making this the oldest, and by far the largest, moot court competition in the world. The team is extremely grateful to its sponsoring firm Slaughter and May and the Lawyers' Alumni Group.

● Dr Gerry Simpson has been awarded the Certificate of Merit of the American Society of International Law for 'pre-eminent contribution to creative legal scholarship'. The Society said that his book *Great Powers and Outlaw States: unequal sovereigns in the international legal order* (Cambridge University Press 2004) was a 'surprising and powerful work that provides a significant new perspective on both past events and present challenges for the international legal system'. Professor Christine Chinkin, also of the Law Department, received the same honour four years ago.

● Dr Enrico Milano (PhD 2004) was awarded the Alberico Gentili Prize for his thesis. The prize is awarded every two years to the best PhD thesis in the field of public international law by the International Centre for Gentilian Studies, a foundation based in Italy, whose role is to promote the legacy of Alberico Gentili, Regius Professor of Civil Law in Oxford 1587-1605. Dr Milano's thesis was on 'Unlawful Territorial Situations: reconciling effectiveness, legality and legitimacy in international law', to be published by Martinus Nijhoff in 2006. He is now based in the Department of International and European Law, University of Maastricht.

● The LSE Lawyers' Alumni Group is made up of alumni, friends, staff and students of the School who study, practise or have an interest in law. It aims to hold at least one meeting per term, and recent speakers have included Lord Woolf, Judge Rosalyn Higgins DBE QC, Lord Irvine and Cherie Booth QC.

● Another series of ten evening classes, leading to a Certificate in International Human Rights Law and Practice, begins in September 2005. For more details, see the Centre for the study of Human Rights website at www.lse.ac.uk/Depts/human-rights



The LSE moot team – see Law highlights, left

A transatlantic contrast

On the closing day of the 2003 session of Parliament, the 800-year-old guarantee against double jeopardy was repealed in England by enactment of the Criminal Justice Act. This new law allowed the Crown to bring defendants to trial a second time, after they have already been found not guilty by a judge or jury.

The UK Parliament's repeal of the ancient guarantee against double jeopardy continued its erosion of four fundamental rights which Americans had adopted from England and, in 1791, incorporated into their new Constitution's Bill of Rights as the Fifth Amendment. That Amendment prohibits compulsory self incrimination, double jeopardy, deprivation of due process, and prosecution for a serious offence without a prior finding of probable cause by a grand jury.

In 1933 Parliament abolished grand juries, which had existed since 1166 and, according to Lord Coke, were secured to Englishmen by Magna Carta. There was little opposition to abolishing this historic safeguard against overzealous prosecution. Parliament accepted the attorney general's rationale that 'grand juries are not serving any really useful purpose and are at the same time very expensive.'

Six decades later, the Criminal Justice and Public Order Act 1994 undermined the privilege against self-incrimination. While not directly requiring the accused to answer police questions or testify at his own trial, the Act authorised the court and jury to draw an inference of guilt from such failure to talk. English scholar Susan Easton noted: 'The effect of this legislation has been... to shift the balance between the prosecution and the defence in favour of the prosecution.'

A decade later, Parliament abrogated the protections concerning double jeopardy and due process. The Criminal Justice Act 2003 authorised retrials of persons acquitted of murder, or some 25 other serious crimes, if 'new and compelling evidence' appears. The repeal also applies retroactively to persons acquitted before its passage – such a retrospective provision would, in the US, violate the Fifth Amendment guarantee of due process and the constitutional ban on *ex post facto* legislation.

Resistance in Parliament to repeal of the venerable double jeopardy guarantee was surprisingly limited. The attorney general Lord Goldsmith acknowledged: 'It is a centuries old rule' but, he added, 'that does not necessarily mean that it is right for all time.'

In the US, a written constitution has so far proved its worth in preserving for England's former colony the four fundamental rights which the English have been abandoning for themselves. ■



Robert L. Weinberg

(PhD Econ 1960) is a former president of the LSE Students' Union and of the Bar of the District of Columbia. He is a retired founding partner of the Washington law firm Williams and Connolly, where he practised criminal defence law for 35 years. This is a condensed version of two articles, published in the *Legal Times* of Washington, 2003-04. For a more detailed version, see www.lse.ac.uk/alumnirelations/news