

Do War Crime Trials Do More Harm Than Good?

**Professor Richard Goldstone, Dr Leslie Vinjamuri and Anthony Dworkin
Chaired by Professor Conor Gearty
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Professor Gearty

It's a tribute to not only the application of our students but the quality of our guests that we have upstairs and downstairs a pretty well packed house in a month notorious for lectures delivered to empty spaces so congratulations to all but especially congratulations to our guests.

As you can see this is a joint Centre for the Study of Human Rights alumni lecture with the Crimes of War Project. The Crimes of War Project we are delighted to be associated with. Anthony Dworkin on my far left is director of the Project and has helped in the planning and execution of this event so we are very pleased that's been possible. I am Conor Gearty, I am the chair tonight and also director of the Centre for the Study of Human Rights.

Now as you know the topic is Do War Crime Trials Do More Harm Than Good and the way we are going to run things is as follows. We are going to ask Richard Goldstone to commence and he's going to speak for 30 minutes, about 30 minutes and then Leslie Vinjamuri is going to speak for 15 minutes in response.

Richard Goldstone was a justice of the Constitutional Court of South Africa. He is presently at Harvard Law School as a visiting professor of law there and has of course, as is well known to people who are interested in the subject, been chief prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. He has been involved in the inquiry on Kosovo, has very many other activities, been on many committees. He serves on the Board of Human Rights Watch, Positions for Human Rights and the International Centre for Transitional Justice. If you do one of those psychological tests and you said to somebody war crime trials the name Richard Goldstone might pop into their heads so indelibly associated is he with this important advance and we are delighted that he has, at some cost to his own time and so on, come over here to talk to this group.

Leslie Vinjamuri is an assistant professor at Georgetown University's School of Foreign Service where she also teaches courses on international organisation. More importantly and much more distinguished she is a visiting fellow at no less an august institution than the Centre for the Study of Human Rights. I have to put in, in small print, she is also at the Centre for International Studies here at the LSE but we grab the main share I'm delighted to say. She's working on what will prove to be I think an important book entitled *Justice, War and Accountability Since 1945*. Now Leslie is at the cutting edge of engagement with this subject in the phase in which we have war crime trials and we are asking Leslie, as I said, to speak for 15 minutes as a kind of comment on what Richard has said.

Then we have Anthony, Executive Director of the Crimes of War Project and editor of the forthcoming revised edition of *Crimes of War: what the public should know*. I sought evidence of its imminence and I bring you evidence of its imminence so although we haven't got it to sell to you tonight we will soon and we would encourage you all to consider purchasing it. Anthony has an intellectual and public policy engagement in the subject and he has his own website www.crimesofwar.org which I commend to you and he is going to comment for 10 minutes at the conclusion of the first two speakers.

Now at that point it's over to you. We finish at about 8 o'clock and we take questions from upstairs and down and we have often what is the most dynamic moment at the LSE Centre for the Study of Human Rights events. So think about questions as you listen. We finish at 8. I have some, for some of you baddish news. This is the Centre for the Study of Human Rights alumni lecture which is marvellous for the alumni because the alumni go to a special dinner afterwards which is strictly controlled. We have been in negotiation to expand the numbers but have been battered back. So the usual reception, which is the reason I fear many of you maybe here and that's why I'm telling you while you can leave, the usual reception will have to be held by yourselves informally in a public house but there will be lots of events next term and I'll guarantee we will give you more if you can remind me of this conversation tonight.

Without further ado therefore it gives me immense pleasure to thank Richard Goldstone for coming over to the LSE and to invite him to speak for 30 minutes on the subject Do War Crime Trials Do More Harm Than Good?

Professor Goldstone

Conor, thank you very much indeed for inviting me to address this audience. I must say I didn't expect an audience either of this size or young age and that's great on both counts. It's a great pleasure too to be associated with the Centre for Human Rights and also the Crimes of War Project with which I have had some association for a number of years, in fact since it begun.

When I was asked to speak on this topic Do War Crime Trials Do More Harm than Good? The organisers must have known that I would be saying that they do more good than harm and that of course is my view. Having said that, I'll try and approach the topic as objectively as I am able.

Let me start by making two points. Firstly, the expectations generally speaking from war crimes trials have been set too high. People have thought that they would be some magical events and they would demonstrably assist and aid the peace. Of course it's not as simple as that and it's a very complex topic that we are looking at this evening.

The second caveat is that obviously no human institution can be only good and be only useful and not have either a cost, whether financial or human. Such institutions don't exist and it's a good time to have a look at this issue of whether war crimes trials do more harm than good.

At this point, it's almost 5 years now since the jurisdiction of the International Criminal Court began. Its jurisdiction formally dates from 1st July 2002, some two and a half months after the 60th ratification of the Rome Statute was received by the Secretary General of the United Nations.

So what I would like to do is to put into the balance some of the advantages and some of the problems, some of the costs, of holding war crimes trials. The topic begins with Nuremberg. Before Nuremberg there wasn't such a thing as international criminal law. There had never before been any significant trial of individuals for war crimes. There were puny attempts after the First World War but they didn't amount to very much. It is important to begin this discussion and this weighing process by considering the successes of Nuremberg.

The first was the recognition of a rule of law in the international community. In democracies the rule of law has been around for many decades, but not so with regard to the international community. This was the first attempt to hold individual criminals liable for violating international criminal law. It was the first recognition that the rule of law could be applied internationally.

The second importance of Nuremberg was the refusal by the victorious powers, after much debate in the early 1940s, to stoop to the level of the Nazi leaders themselves by summarily executing them. They were offered and given, certainly by the standards of the middle of the 20th century, a fair trial.

Thirdly, Nuremberg provided important acknowledgement for the victims of the most appalling war crimes and that was important. In my book, the main customers of war crimes trials, like any trials, are the victims. Victims want acknowledgement whether in a domestic situation, whether you are talking about rape survivors or families of people who have been murdered or have been robbed - what they want is some official recognition and I underline "official recognition" of what happened. They know what happened to them, they don't need to go to court and hear evidence of what happened to them, they know, but they want the official acknowledgement and that for many victims is the beginning of their healing process.

Fourthly, at Nuremberg a credible history of the criminal activities of the Nazi leaders was recorded. That is a very important benefit that comes from all forms of justice, not only official trials, but also Truth and Reconciliation commissions which, I would suggest, are a different form of justice. Whatever the form of justice, the official record of the history is very important.

The fifth success of Nuremberg was to make fabricated denials of the Holocaust more difficult. The work of Holocaust deniers would be a lot easier but for Nuremberg. The evidence was meticulously collected by the four prosecution teams. I was surprised when I first read the Nuremberg record, soon after I went to The Hague to prosecute war crimes in the former Yugoslavia, that 75% of the Nuremberg record consists of Nazi documents. They were really condemned from their own documents. Of course, in The Hague we weren't so lucky. We didn't have documents and we had to build cases from the ground up using witnesses, live witnesses.

The sixth success of Nuremberg was helping to avoid the attribution of collective guilt to the whole German nation. The identification of the criminality of the leaders who were responsible for the egregious crimes is crucial.

I have not read or heard serious suggestions that the world would be a better place today but for Nuremberg or that it wasn't a good idea to give the Nazi leaders a fair trial. That was really the kick start to what has become international criminal justice. In the immediate aftermath of the Nuremberg Trials and their successes, a permanent international criminal court should have been established soon after. That was the intention. If you look at the 1948 Genocide Convention you will see in Article 6 there is a reference to an international criminal court having jurisdiction. It was assumed that there would be a treaty-based court. However, the Cold War supervened and the idea was placed on hold for almost half a century. The Soviet Union and China during the Cold War would certainly not have been willing to agree to any international criminal court. It was only in 1993, in the face of huge war crimes being committed in the former Yugoslavia that the United Nations Security Council, to the surprise really of all lawyers and politicians, decided to set up the first ever truly international criminal court for the former Yugoslavia. That was followed shortly after by the international criminal court for Rwanda.

Of course had the events in the former Yugoslavia and Rwanda been in the reverse order we probably would not have had either of those international tribunals. There wouldn't have been a Rwanda tribunal but for Yugoslavia and there wouldn't have been a Yugoslavia tribunal but for the fact that it was in Europe and that the major western powers were appalled at what they said would never happen again. Here it was happening in their backyard.

So let's fast forward and talk about the successes of the two ad hoc tribunals. What I have to say tracks closely the Nuremberg experience. The first though is different. The first and a major success of the United Nations tribunals are now taken for granted I'm happy to say. However, it was by no means assumed that international criminal courts could hold fair trials. Many people doubted whether you could get judges from 11 nations and prosecutors from 20 nations, from common law countries, from civil law countries and all sorts of systems in between, that they could come together in The Hague and hold fair trials. I don't believe that there is any suggestion, any serious suggestion that the trials in The Hague or Arusha have been in any manner unfair. The judges strove for equality of arms and that wasn't easy to achieve. The resources of the prosecutor's office in an international court can never be matched by those available to the accused. But that's true also of any domestic system. Steps were taken in The Hague and Arusha to ensure that those who appeared before the tribunals were adequately represented. The result was that the trials were fair by international standards.

Like Nuremberg, the UN tribunals brought acknowledgment, important acknowledgement, to the victims. Thirdly, like Nuremberg, they provide a credible record of the war crimes committed by all sides in the former Yugoslavia and of the efficiently executed genocide in Rwanda. When I began as effectively the first chief prosecutor of the Yugoslavia tribunal the

denials were rife. The Croats, the Serbs and the Bosniaks all regarded themselves as victims and regarded the other two as perpetrators and of course after the evidence of hundreds upon hundreds of witnesses in The Hague those denials have all but disappeared. All sides now have had to acknowledge and accept that they were all, to a greater or lesser extent, both perpetrators as well as victims. That's very important for the region.

Like Nuremberg the UN tribunals have put a stop to many of the fabricated denials. Allow me to give you one example that occurred during my term as chief prosecutor. I refer to the well publicised case of Dragan Erdemovic. I first heard about him when I received a telephone call in my office in The Hague from a distraught and weeping American Broadcasting Corporation journalist. She was working out of London, and had been contacted by Erdemovic who was a member of the Bosnian Serb army. He informed her that he had participated in the massacre of some 8000 civilian men and boys outside Srebrenica in 1995. He had had a fall out with his commanding officer and decided to spill the beans. He offered to meet with a video team from the ABC, (why he chose the ABC I have no idea). She went with a cameraman and met Erdemovic about some 80 miles outside Belgrade and he confessed to having shot and killed in excess of 70 of these men and boys outside Srebrenica. He claimed to have done so under considerable duress. His commanding officer told him to form part of the firing squad. A mass grave had been dug and these men were lined up in groups of about 20, facing the grave. They were shot in the back of their heads and their bodies fell into the grave. He protested but his commanding officer told him that if he didn't want to join the firing squad he could join the victims and that if that was his choice his wife and family would also be made to suffer. In the face of those threats, he joined the firing squad.

Erdemovic drew a remarkably accurate map of where this mass grave was located. It turned out to be a mass grave not known to the NATO forces who were then in Bosnia. The journalist fortunately took the map to the United States embassy in Belgrade. Then the journalist made her mistake. She called her London office and said that she had the video of Erdemovic and she was bringing it out that evening on a flight from Belgrade to London. Her telephone conversation was tapped. At the airport she was arrested, the video tape was confiscated by the Belgrade police, and she was allowed to continue her trip. Her understandable fear was that Erdemovic would be murdered by the Serb security police once they saw the videotape. She said that in desperation she was calling me to inquire whether I could assist. I immediately approached one of the judges and obtained an order against Serbia for the delivery to the Tribunal of Erdemovic as a potential accused and witness to what happened at Srebrenica. Not for a moment did I consider that the Serb authorities would comply with the order. My thought was that if the story was publicised it would be a form of protection for Erdemovic. The Milosevic regime would be less likely to do him harm if his story was well publicised.

Milosevic was then hoping for some goodies from the United States and Richard Holbrook was on his shuttle diplomacy trips, and to our pleasant surprise Serbia handed him over to the tribunal. One of the reasons they could do it incidentally was that Erdemovic wasn't a Serb. He was half Croat and half Bosniak. When he arrived, and we made public what I've just told you, the official spokesperson of the Bosnian Serb army denied that anybody was

massacred at Srebrenica. It was said to have been anti-Serb propaganda. It was denied that this mass grave would contain war dead from Srebrenica. They said if there's a grave there it would contain war dead from battles decades and decades before. We found the grave with the map that Erdemovic had given to the journalist. We sent the location to the US intelligence people and obtained from them satellite photographs corroborating the version of Erdemovic. On the first anniversary of the massacre, Madeleine Albright, then the US ambassador at the United Nations handed the photographs to the media. Physicians for Human Rights, Boston based NGO agreed to exhume that mass grave. They were able to establish that the people were killed in 1995, all of them were male and all of them had their hands tied behind their backs and the cause of death was a single bullet wound to the back of the head. That is not the way people die in battle. That evidence put a stop to the denials. It was that evidence that made it just about impossible for the Bosnian Serbs to deny the massacre at Srebrenica and of course that too was important. Without a war crimes tribunal, without war crimes trials, that wouldn't have been possible. Erdemovic incidentally was put on trial. He pleaded guilty; he was initially sentenced to 10 years by the trial chamber. That was reduced to 5 years on appeal.

The next advantage of the ad hoc tribunals is the huge advance in humanitarian law. For the first time it was being used and here was a body of law that had been carefully nurtured and advanced by the International Committee of the Red Cross but never used. Many examples come to mind and I would refer today to the advance in respect of gender related crimes. Systematic mass rape as a war crime had almost been totally ignored. In my view, one of the great successes of both the Rwanda and Yugoslavia tribunals was these huge steps forward in respect of gender related crimes. One sees the result in the Rome Treaty setting up the International Criminal Court where gender related offences are adequately and appropriately defined. Another success of the two tribunals was, indeed, to give impetus to setting up the International Criminal Court. Without these successes of the UN tribunals I have no doubt we would not have an international criminal court today in The Hague.

There are problems associated with them – I've talked thus far about "the good news". The first is their cost in financial terms; they're expensive. The UN war crimes tribunals are each costing well over \$100 million a year. However, this cost is relative. The annual cost of each tribunal was equivalent to the cost of about 2 days bombing over Kosovo. So in comparison to making war it's really very cost effective. The Oil for Food Investigation with which I was associated, the investigation headed by Paul Volcker, lasted less than a year. It cost \$65 million. That gives you a good comparison.

The second cost in respect of some of these tribunals is their remoteness from the scenes of the crime and that is a huge disadvantage. The Hague could be a million miles from Sarajevo or Zagreb or Belgrade. It's remote from the places where the crimes were committed, but of course there was no alternative. They couldn't have been held anywhere in the former Yugoslavia for many reasons. Firstly, Croatia and Serbia wouldn't have had them. They refused to acknowledge the legality of those tribunals and particularly the government of Milosevic but Tudjman wasn't a great deal better. There were questions of safety of witnesses; of judges and for the same reason the Rwanda tribunal was housed in

Arusha. It would have been very difficult to have had it in Kigali in the immediate aftermath of the genocide.

Of course it is not inevitable. The Sierra Leone Special Court has successfully held its trials in Freetown. Even then for political reasons, its trial of Charles Taylor is to be held later this year in The Hague. So one has to try to have trials where the crimes were committed but if it's not possible I would suggest it's better to have them away from the countries than not to have them at all.

The length of trials is a problem. There is no way that the prosecution evidence in the Milosevic trial should have lasted 2 years. I would suggest, with respect to the judges, that they were far too lenient with Milosevic. They bent over backwards to show how fair they were. They were trying to mollify his constituency. Well his constituency back home would never have accepted the fairness of the trial, no matter what the judges did. There is no way that he should have been allowed to demean the court and to use it as his political platform and get away with it.

A current complaint about international justice is their negative effect on peace negotiations. In Uganda, President Museveni of Uganda, who referred the Lord's Resistance Army to the International Criminal Court, is now complaining that it is interfering with peace negotiations. Well they could be having that effect – I concede the possibility. In some situations it is almost inevitable that indicting war criminals may make peace negotiations more difficult. I hasten to add that in my experience they've had the opposite effect. The two indictments I issued during my term of office against Karadzic and Mladic, tragically still at large, assisted the peace. There would have been no Dayton meeting if Karadzic had not been indicted. He would have insisted on going there and could not do so only because he was indicted. The Americans would have arrested him and sent him to The Hague. The fact that he couldn't go made it possible for President Izetbegovic of Bosnia to attend the meeting. Remember that Dayton was held some two months after the massacre at Srebrenica. There was no way that President Izetbegovic or any other Bosnian leader would have considered being in the same room as Karadzic in November of 1995. So the indictments assisted in bringing an end to the war in Bosnia and Herzegovina.

The indictment by the International Criminal Court drove Joseph Kony and his henchmen to the negotiating table. I would add, too, that if one learns from the experience of Sierra Leone, it was impunity there that was used by the rebels to re-ignite the war. Of course if Uganda wishes to avoid the jurisdiction of the International Criminal Court the way it could do that would be by setting up its own credible trials of these people.

Many of the criticisms of war crimes trials do arise from high expectations that cannot possibly be met. Clearly they cannot bring peace on their own but they certainly can provide important building blocks for peace. They can also provide a deterrent effect and there is some evidence of that. I would be happy to deal with that during question time.

Let me conclude by saying that accepting the problems and the costs to which I referred, and there may well be others, I have no doubt that the world is a better place today than it

would be but for the rapid growth of international criminal justice. The reason for that growth is the efforts people like you. It's really civil society that drove governments to create the ad hoc tribunals and it was civil society that resulted in the impressive number of countries that have ratified the Rome Treaty. It is tragic, in my view, that the United States has stayed out of it but I am hopeful that the people of the United States, sooner rather than later, are going to demand that their country joins the rest of the democratic world and rejoins their friends particularly in Europe in supporting the International Criminal Court. Thank you.

Professor Gearty

Thank you very much, Richard for that superb start to the evening. We now have two comments on what we've just heard and more general reflections. The first as I indicated earlier from Leslie Vinjamuri.

Leslie Vinjamuri

Thank you, Conor. I should say I am especially honoured to be on this panel with Justice Goldstone and I should thank Conor, *especially* for putting me in such a difficult position in having to argue the other side of the case against somebody who is as distinguished as Justice Goldstone. . . so I will be very cautious.

I should say in listening to Justice Goldstone's remarks that I think we do differ but maybe perhaps not as much as I might have thought before hearing him speak tonight. I think Justice Goldstone is exactly right in saying that the sights have been set incredibly and often unfairly high for war crime trials. At the same time I think there is a very crucial reason for that and it has much more to do with the recent history of war crime tribunals and international criminal justice than it has to do with Nuremberg.

I am going to say a few things about the recent history and I want to address some of the points that Justice Goldstone made about Nuremberg. I will speak about this notion of individualising guilt and then say a little bit about the long term trajectory of international criminal justice. I am going to focus my remarks primarily on the role of war crime trials and the threat of war crime trials and the issuing of indictments *during* war and in recent post-conflict situations. The reason I will do that is in part is because this is where I think that the real debate is being had right now in international criminal justice. And, it's where I think the stakes are actually incredibly high and nobody should be left off the hook.

Indicting the LRA during the time of war and during a time when there has been a push for peace negotiations has very high stakes. Indicting Milosevic during the bombing of Kosovo arguably has very high stakes. Prosecuting Saddam at a time when there was ongoing war, more or less, depending on how you want to define war, in Iraq has very high stakes. These cases have much, much higher stakes I would argue than something like the arrest of Pinochet decades after Chile's transition to democracy had been more or less consolidated. Pursuing trials in Argentina in the 21st century is quite a lot different than pursuing trials in Argentina immediately following the Dirty War. So I think it's incredibly important to really differentiate and distinguish between what's been referred to as justice in real time and justice that comes quite a long time after the consolidation of peace.

What is at stake? The most fundamental values, which are the protection of life, and one thing that we do know more or less is the fact most highly associated with increased numbers of deaths is the duration of war. The longer that wars last the higher the number of deaths so it is incredibly crucial to begin to try to understand -- and it's very complex as Justice Goldstone noted -- but it's crucial to begin to try to understand the complexity of the relationship between justice and peace during these transitional moments. And again, I don't think anybody should be left off the hook.

Having said that I found myself looking at the title of the debate and saying well, you know, the political reality is that the issue of accountability *is* on the agenda. It doesn't really matter whether mediators want it to be on the agenda or not, it's there and it's there to stay. If you look at the number of wars, the wars that were ongoing or concluded since 1990, 49 of these roughly 82 wars had some sort of formalised mechanism or policy designed to deal with the problem of accountability. Now the type of mechanisms that have been designed have varied dramatically and in many cases there have been amnesties but nonetheless this is a significant increase over this number during the Cold War. Between 1945 and 1989 only 12 of the wars during that period, and bear in mind there were a lot more wars during that period than there have been since 1990, only 12 of those wars had some sort of formalised policy for dealing with the question of accountability. So there has been a dramatic, we know this by just reading the newspapers, but there has been a dramatic increase. And I would argue that this question is there to stay and it's increasingly a question that's being dealt with at the time of transition so it really needs to be sorted out.

With that said, what do we know that is generalisable about the effectiveness of trials or amnesties or truth admissions or the range of options that are out there. What do we know about the effectiveness of these mechanisms in contributing to peace? It's a very high bar to set but it's absolutely crucial because it is what is most at stake during the peace process. We don't know a lot, the relationship is clearly complicated. At the level of pure correlation amnesties have been more often associated with renewed warfare than they have with sustained peace but not by much. Trials have been slightly more often associated with peace than with war but not by a lot. So it's really no longer a question of yes or no, more harm or less harm, when it comes to war crime trials, it's really about understanding the conditions under which war crime trials are more likely to be associated with war than with peace.

The tendency again to speak in absolutes I think has been the most dangerous thing that's happened in the sort of push for international criminal justice. It's not surprising given how recent much of the emphasis on this area has been. I think it's what tends to happen in new arenas whether they are academic debates or policy debates. It's undoubtedly the case. Advocates have been extremely reluctant to speak about conditions and conditionality but what you do find, I would argue, is that you hear advocates of international criminal justice increasingly talking about timing. This is something that I find very problematic because when somebody talks about timing they tend to be talking about the order of things, the sequence of things, and the respect with which these matter fundamentally for outcomes. So the notion of timing is one that is implicitly bringing in theories of causality and I think it's important to make these explicit and to subject them to a lot of scrutiny.

So what does the recent history of war crime trials suggest? I would suggest to you that it confirms the old wisdom that war crime trials are most successful when they have been pursued in stable political environments with high functioning institutions capable of guaranteeing compliance with the rule of law or, in the absence of highly effective institutions, when they're backed by a preponderance of power. The notion that we can put justice before order absent any credible commitment from a greater power I think has been shown to be naïve at best and the use of the justice tool during war is highly complex and claims of success must be moderated.

To speak about the LRA - the argument that Justice Goldstone made I think is the argument that one hears most often, that the indictment of the LRA was crucial in getting the LRA to the table. I was at a conference a couple of weeks ago where somebody, who has spent a lot of time on this issue, said well, yes and no. The real fact of the matter was that the indictment was important but only in combination with political pressure from the Sudanese government which wanted the LRA out of southern Sudan and absent that combination of factors the indictment would have had very little effect.

It's also been argued that amnesty, to take the other side because simplistic remarks are often made about the role of amnesty in securing peace as well, but amnesty in El Salvador, this is in the early 1990s, was crucial to bringing the parties to the table. Perhaps, but only after a very long war of attrition in which neither side was able to secure military victory and in which funding had dried up with the end of the Cold War. So to say that amnesty in El Salvador was crucial to beginning a peace process facilitated by the United Nations is equally naïve and sends a very bad message.

My reading of recent history suggests that the pursuit of war crime trials during war and immediately following war has got to be backed by the effective application of military force either internationally, domestically or regionally. Absent this these initiatives are likely to be captured and subjected to all sorts of politics, as has been the case in Darfur, and may be come an excuse or even a key factor in inhibiting peace.

I want to say a couple of words about the Nuremberg trials. Why was it that the Nuremberg trials enjoyed the relative success that they did? (I don't think they were completely successful.) They followed on from a military victory that took place during an occupation that provided the stability necessary for the pursuit of justice. The individuals that were being prosecuted were not members of a group that was intended to participate in a future government. This is fundamentally different than the majority of cases that we see today. Military force, criminal justice and post-war governance were not only compatible they were part of a comprehensive strategy for building a democratic Germany and that mattered to the success of Nuremberg. Political judgement was exercised throughout and when war crime trials, and here I speak of the subsequent American trials at Nuremberg, subsequent to the IMT, when these were seen as impeding western interests they were abandoned and there was a series of clemency programmes designed to begin releasing German war criminals. Why? Because it became more important to court Germany as an ally against the rise of Soviet power.

The other thing that was happening in Germany at the time was that Germans were becoming increasingly angry at being treated as enemies rather than courted as allies given the change in the political situation. This is problem of alienation is a real risk of war crime trials. In Germany, it was moderated eventually in the 1950s through careful political judgement. This has been an abiding lesson I would argue of successful war crime trials throughout and possible one that's made less tenable by the increasing independence of international courts. So it's really not a matter of whether the world would have been better without the Nuremberg trials but it's important to clarify the political realities that shaped the Nuremberg trials.

I also want to say a word, and Justice Goldstone remarked on this, about the key theory that underpins the notion of war crime trials and their contribution not only to peace but to reconciliation. This notion is that trials individualise guilt, that they decollectivise guilt, that they place guilt on the individuals and thereby contribute to deterrence by ending future cycles of violence. It's not clear that the German public reacted in this way to the trials. It's certainly not clear in the former Yugoslavia. Most of the polls from Serbia suggest that Serbs have identified with those individual Serbs that have gone before the tribunal. This has been the same with the Croats and the Bosniaks. One quite interesting study of Bosnian judges and lawyers also suggested that this community felt very alienated by the trials. But there has been no evidence that trials have softened ethnic identity in the former Yugoslavia. There is also some evidence to suggest although it's too early to say that the Sunni community in Iraq has felt alienated and fearful as a result of the trial of Saddam. In Kosovo I would argue that trials have, if anything, cemented rather than diffused ethnic divisions. So I think there has been very little evidence to suggest that this whole notion of individualised guilt has really been what we are led to believe it is.

So when are war crime trials least likely to be effective? First, I would suggest that where the parties that participated in the war are also those same parties that are participating in the peace, the barriers to success are extremely high. This is an even higher barrier when these wars are defined along ethnic or sectarian lines such as in Iraq or Bosnia. Secondly, where institutions are weak and incapable of ensuring compliance by all parties -- which is almost by definition the case in most of these transitional and post-conflict states -- and thirdly, where there is insufficient political will or capability by those with superior power to back up trials and to make the difference up for what institutions cannot do. Fourthly, in the face of ongoing conflict war crime trials can be inherently destabilising and may impede efforts to negotiate a peace. We don't know fully the impact of indictments during war, but we know that it is a complicated relationship and needs to be thoroughly investigated.

Finally, there needs to be a recognition that in times of war *especially* justice is not neutral. It does not operate independent of politics. The decisions that are being made about the timing of the release of indictments, the unsealing of indictments and so on and so forth are inherently political and they affect a very crucial, political process.

I want to close with a few remarks on long term trends in justice. Proponents of international criminal justice and specifically of war crime trials almost always argue for the long term

view. Fine, they argue, there are mishaps along the way but in the long term there is this notion that justice will lead to more justice. This understanding assumes there is a spill over effect; there is a logic of diffusion; there is a logic of demonstration through the application of something that could be thought of as soft power. This rests on a very specific understanding of norm creation, one that is, I would argue, not terribly sensitive to the role of power in shaping change in international politics and the role of institutions in underpinning durable support for norms. I like to say to a lot of my academic friends, who like to debate this, you get to the long term through the short term.

In terms of what's happening now, when I look at a lot of across cases of war and war termination, I would suggest that there's been an amnesty backlash. Amnesty is on the rise, it's changing in character and I think that this in large consequence a response - a consequence of international criminal justice. If you look at the period again since 1990, and especially since the mid-1990s, the growth of formalised amnesties is astonishing and there is a woman name Louise Mallinder, who is an Irish recent PhD graduate, who has put together this quite extraordinary amnesty database that counts more things than I can imagine but she pretty much has agreed, well completely, with this finding that the rise of amnesties in a range of different forms has been truly stunning. And it has not gone unnoticed. The United Nations has been working with leading advocates of accountability and international criminal justice to develop guidelines about what the United Nations position should be on a range of different amnesties. Clearly certain things are off the table but this whole way of thinking about amnesty has become much more complicated and much more complex as a result of the drive for international criminal justice. So it's not straightforward and as we know there are many cases where amnesty has been highly successful.

Finally, accountability is not the key concern of people on the ground in conflict situations, I would argue. The key concern of people on the ground are access to the material goods that enable them to lead their daily lives. Material payments, reparations that allow them to get on with their life are often crucial. This is not to say that justice is not important, this is not to say that truth is not important, but if you compare in surveys the way that people tend to rank truth or justice relative to material payments, it pales by comparison so we shouldn't overstate the significance of accountability for victims in states that are in conflict by placing it above all other values.

Finally, one of my overarching concerns in all of this is that there is a rising gap between the preferences of the international community and the preferences often of the targets of this justice and this isn't simply about avoiding the long arm of the law. In many cases this has been about the desire of domestic groups, domestic peoples and states to consider alternative forms of dealing with their past, that are grounded in very different norms and very different understandings of what it means to forgive and move on. Thank you.

Professor Gearty

Thank you very much, Leslie, for that and it goes without saying that Richard will have an opportunity when responding to the first batch of questions to deal as far as you want with

what we've heard, a fascinating set of ideas and observations, and now our co-host for this evening, from the Crimes of War Project I should add, Anthony Dworkin.

Anthony Dworkin

Thank you, Conor and because I see my role here not as staking out a position as the two previous speakers but really as a sort of transition to the question period I think I'll just speak from here, from my chair, very comfortably. On behalf of the Crimes of War Project I would like to add my thanks to Richard Goldstone and Leslie Vinjamuri for taking part in tonight's event and for their very thoughtful discussion of this complex issue. So as I say what I am going to do, try to do, is just to give a few thoughts, raise a few points about the ways in which these issues get framed that might perhaps lead on to the question period and might be addressed in some of the discussion to follow.

Just to say very briefly about our organisation, the Crimes of War Project, for those of you who don't know it, our aim is to present information about war crimes, atrocities and international justice in a way that is accessible for journalists—initially our target audience—but really now for anyone who is interested in engaging with these subjects, in following this area, who doesn't have a formal specialist legal training in what was until recently a rather arcane branch of the law. And the subject of war crimes trials, I am delighted it is the subject of this event, because I think it is a really good illustration of why what we are trying to do matters, because this is a perfect example of the way in which legal questions, questions of international law, which perhaps not long ago were really at the periphery of international politics, have now increasingly moved to the centre.

So anyone who is concerned with basic questions of war and peace, the legal dimension is important there and again, picking up on something Leslie Vinjamuri said, I've been also struck by how widely these questions have been debated and particularly this question of the inter-relationship between war crimes trials and accountability and peace processes and I think this probably is a tribute to the progress that the international justice movement has made in the last decade and a half. There is now, as you said, this kind of default assumption that issues of accountability have to be there on the table in some way when the peace process is taking place. How they're dealt with is a different question but they are there, they are not as they were being pushed aside.

I was in Afghanistan at the end of last year, working with a group of Afghan journalists. This is a country where the International Criminal Court doesn't have jurisdiction but nevertheless this question of the role of accountability and justice after the long and very brutal wars in Afghanistan was a very, very live issue for them and indeed it was such an emotional issue that we almost had a fist fight between two of the journalists participating in our seminar over this very subject. Since then of course Afghanistan has passed an amnesty law which pushes the subject off the table but in the meantime another post-conflict country, Nepal, these issues are also rising to the fore and we actually have an article on our website looking at the way they work in Nepal.

So the issue is often framed in a very simple way of peace against justice and one of things that both speakers I think have done very well tonight is to show that it's much more complex

than that, that in any given situation the implications of pursuing justice, the challenges and possible trade-offs are likely to be different and that international justice is one form of international engagement and it's difficult to consider it separately from other forms of intervention and it may be inadequate to look to international justice as a substitute for other forms of intervention that may be needed. Again the situation in Darfur springs to mind here as Leslie Vinjamuri mentioned.

What I would like to do is to look at two questions that seem to me to come up in the context of considering the relationship between the drive for justice and accountability, particularly in an international dimension, and the countervailing importance of securing an end to conflict or securing a peace that may be there but maybe not firmly entrenched. And just as a side note I think, again, Richard Goldstone mentioned the point of deterrence, and at the risk of being accused of looking to the long term there definitely is a way in which we shouldn't exclude the importance of deterrence. This is another factor that's there and as it were the particular trade-off in any particular conflict between the drive to secure and end fighting or to create a more stable peace and accountability shouldn't just be looked at in its own terms because there may well be an effect that if you have a more predictable likelihood that people will not be let off for crimes, you know, the next time that there is a conflict in that particular location or nearby or wherever that could be a factor.

So I think simply looking at the equation on the ground is not sufficient but clearly it is very important and the first question I want to raise is how much scope there is within the notion of justice for different approaches. It's inherent in the design of the International Criminal Court, as probably a lot of you know, that it gives priority to local justice processes. So international justice according to the ICC model only steps in if the country involved is unable or unwilling to prosecute itself, that's the phrase in their own statute, but how much scope is there in that notion of "unable or unwilling" for methods that are slightly or perhaps quite a lot different from the conventional international criminal prosecution that we are becoming familiar with? If a society takes the collective decision not to go for that kind of criminal prosecution but perhaps to pursue some sort of traditional tribal justice, this is something that has been much discussed in the context of Uganda, or perhaps some form of truth commission but one that has some individual acknowledgement of responsibility for serious crimes, so if a society is choosing to go for one of these approaches, not simply for the purpose of shielding the guilty but for satisfying some collective vision of justice or social harmony, would that be compatible with the notion of giving some scope to local justice within the ICC's notion of complementarity or would that be seen as a step too far?

And that raises a further problem which is, how easy it is to distinguish between agreements, amnesty agreements, that express the will of a society and its sense of justice, and those that are rooted in an unequal balance of power within a society and that may allow military or criminal factions to immunise themselves from proper scrutiny? And to go back to the situation in Afghanistan, where I can't claim to be an expert based on my week in the country, but my sense and the sense that I got from many of the people that I was speaking to, is that many people regard the amnesty there as a kind of self-amnesty on the part of the politically powerful in that country who in many cases are the same people who not long ago were not so much politically powerful but militarily powerful, in other words warlords.

So that leads on to the final point that I want to make before I close which is again something that both the previous speakers have touched on and that's the question of whose interests should be paramount here. Is there a primary constituency that we should be looking to in making these decisions about this very difficult balance to be struck between the imperatives of peace and the desire for accountability? Should international bodies, courts and the Security Council, follow their own best judgement as it were and try to form an objective judgement about the principles of justice and the chances of peace? Is there is some general principle implicit in the notion of crimes against humanity, that as an international community we should simply not allow people to get away with atrocities that rise to such a level that they shock our conscience and shame our humanity, or should the society involved itself have a kind of prior call? Should they have a decisive say themselves as to how they want to deal with a legacy of what's taking place in their country and should that decisive say come through democratically elected governments? Or, a third possibility, one that Justice Goldstone mentioned, within that society should we give priority to one particular group within that society and that of course is the victims of the atrocities? Should the victims and their relatives have some privileged status on the grounds that they are the ones who suffered, should they be as it were the main customers whose opinion counts a little bit more than the rest of that society if their wishes perhaps go against the more generally expressed views?

Anyway those are a few points that people may or may not want to pick up during the discussion and I'll leave it there, relieved myself that I haven't had to take a stance on this complex and difficult subject.

Professor Gearty

Anthony has come in at 8 minutes and 21 seconds so Richard Goldstone has negotiated with the supreme leader, 1 minute and 50 seconds, up to 2 minutes, to do a quick riposte to what's he heard which means that when we free up for the audience we have the questions and answers directly on that.

Richard Goldstone

I just want to make one point really. I think that Leslie Vinjamuri has made the best case I can imagine for demonstrating the difficulties and complexities of indicting suspected war criminals during the war. Of course it would be easier and would make much more sense to wait for the peace but that's not a luxury that any international criminal justice system can afford from a practical point of view. Either you have international criminal justice and international criminal courts or you don't, that's the choice that the world has to make. Are we better at the end for having them than we would be without them?

In the case of the former Yugoslavia we had to begin investigations during the war because that was the mandate given to the court and it had, as I've mentioned, some good effects but you can't turn it off and turn it on like a hot water tap. You can't have indictments against the Lord's Resistance Army and because they suddenly decide they want peace negotiations turn it off. So this is the practical reality. Of course it would be pleasant to be able to do that but that's not how it can ever work and, as I say, one has to look at both sides and decide

whether we want such a system or not. Do we want to continue giving impunity to war criminals or do we want a system whereby their criminal actions are dealt with in an appropriate way.

Professor Gearty

Thank you very much, Richard. I am going to let Leslie answer in the course of responding to other questions. We have just short of 30 minutes so we have time to develop a good interaction. We have roving mikes here and there and what we are going to ask you to do is say who you are and where you're from if you feel you can, we hope you can, and then please a fairly brisk question or a concise observation but not, if I may so, a longish discourse regardless of how fascinating. I have just here Mary Kaldor whom I know and therefore she may or may not choose to give her name and I have this gentleman here and then I have this lady in white so we'll take you three very quickly and Mary, you can set an excellent example by conciseness.

Question

Mary Kaldor – Okay, I am going to make a concise observation and a question. My concise observation is on peace and justice. Nowadays the key to peace is establishing a legitimate authority and you can't do that with people who perpetrated war crimes and actually in my view indictments are very, very helpful in limiting the power of the war criminals in the peace processes and Afghanistan is an excellent example where there weren't such crimes and where the warlords and the government I think has undermined the legitimacy and helped to encourage the Taleban.

Now my question is to Richard Goldstone, who I was always agree with every word he says...

Professor Gearty

We don't need that!

Mary Kaldor

This question is, because I want to know the answer, the objection that I hear to war crimes trials is that they are always victors justice. Nuremberg didn't include any charge against the allies for instance the bombing of Dresden and as a result air strikes are still considered legitimate although when the Nazis bombed Guernica everyone was appalled and nowadays what the Serbs say, what Muslims say about Saddam Hussein, is well they are just doing it because they can and they get away with terrible crimes and so that in their eyes discredits the war crimes. So what I want to know is how do we answer that?

Professor Gearty

Thank you very much, Mary. Observation and question precedent is not to be encouraged but we'll accept it there! Thank you as a great expert of the field.

Question

I identify myself as a native of the only capital in the world that has been bombed by both NATO and the Nazis so you know exactly where I'm coming from. I think that both the first

two speakers have had a somewhat narrow view of Nuremberg and I daresay also Mr Richard Goldstone, who of course can only represent one side of the coin, namely the prosecution and nothing but the prosecution in The Hague. So when you think it's been good it's been good for the prosecution but you can't Mr Goldstone also have it both ways in praising Nuremberg and also the UN tribunal in The Hague because The Hague effectively disowns Nuremberg.

You have just stated that Nuremberg was a success, well why was it a success? The reason it was a success is that all about countries, certainly in Europe, made provisions for the lessons of Nuremberg to be part of their own laws if you follow me and one of the key lessons of Nuremberg, by the way, it wasn't merely hanging Nazi war criminals, two-thirds of European industry was destroyed, 30 million people were murdered. Americans may not have the same view that countries here did not want for that to happen again, that is the main lesson and the key thing there was the lesson that one thing that has to be avoided is aggression, namely attacking another state by another state. Namely Mr Hitler's aggression of the 1st September 1939 against Poland was a supreme war crime but unfortunately we've now had 19 NATO countries who have done exactly the same thing as Mr Adolf Hitler did on 1st September 1939 when on the 24th March 1999 they repeated the same process with aggression against the Federal Republic of Yugoslavia.

I could say a great many things but if Mr Milosevic and all the 19 NATO leaders had been at Nuremberg then Mr Milosevic would watch how the other 19 would be hung along with the Nazi leaders and he may have been found guilty but he would not have been found guilty of aggression.

Professor Gearty

Thank you very much and for making the point as powerfully as you did.

Question

I come from Croatia where I used to work as a journalist investigating war crimes, now I am a student here, and my question is short but just so I wouldn't get a very short answer I am going to extend a bit, what can be done, what would be needed to be done in order for the ICTY to continue its life for a maybe a few more years? The reason why I'm asking for that is that the big fish are still not caught or are avoiding their trials, avoiding them successfully. National judicial systems in Croatia and Serbia are not fair by international standards. Their governments are very successful in public relations even more than the current White House administration. Civil society is weak when human rights and reconciliations are in question but very strong when considering nationalistic associations who deny war crimes and the media are unlike the second part of the...well unlike after World War II, market oriented, politicised, and there is no New Yorker who would publish for instance Hannah Irons letters from Jerusalem during Eichmann's trial. We simply don't have that in the Balkans today so what can be done to have the trials in The Hague prolonged?

Professor Gearty

I am going to ask for comments to those three responses.

Richard Goldstone

I would like to deal with Mary Kaldor's very important question about how to avoid victors' justice. Of course one needs to do that. This is one of the problems of Nuremberg because it was victors' justice. It's one of the problems of the Rwanda tribunal. This is a problem that faced both Louise Arbour and Carla del Ponte - whether to investigate the alleged crimes committed by the RPF, by the army of the present government of Rwanda. That was a difficult choice because had they done that it would probably have been the end of the tribunal. I mean here politics came into it and to an extent it was a sort of victors' justice. This is a large issue facing the legacy of the Rwanda Tribunal as it comes towards the end of its life. That's the reason you need an International Criminal Court. You need a court that literally represents the whole global community. The judges of the International Criminal Court don't represent the victors and I've no doubt that if any of them come from a country that may be involved in a prosecution they will have to excuse themselves.

It's the problem with the Saddam Hussein trial. It was seen as victors' justice and to an extent I've no doubt that the supporters of Saddam have turned him into a martyr because it's seen as an American, anti-Sunni proceeding. The trial shouldn't have been held in Iraq at all and particularly not in the present situation with bombs going off literally around the court room and defence counsel being murdered. How that can possibly have been seen as a fair trial and people were warned. Many of us were shouting and screaming about the timing and the place of that trial. So the International Criminal Court seems to me the only way of avoiding that.

Leslie Vinjamuri

I have a response to Professor Kaldor as well. Absolutely, you have to have legitimate political authority. Amnesty, if it's the way to end a war, should not in my view come without conditions especially if it's to be successful. The kind of amnesty that is bound to fail is the kind of amnesty that was pursued in 1999 in Sierra Leone which not only granted amnesty, but actually *empowered* Foday Sankoh. So Amnesty to the extent that it is, if it is the solution for ending a war and saving lives should come with conditions which effectively disempower and remove spoilers from the capacity to participate in or undermine future government. It's not an ideal solution but it's simply not realistic to say that you never will be in a position where you need to bargain in order to end a war. So it's all very complicated.

I did want to say one thing in response to the comment by Richard about the idea that once these courts are up and going you can't really stop the process and so there you are. Yes and no. I mean I think clearly much more yes in the case of the ICTY than in the International Criminal Court. There are a lot of wars in process right now. There are lots and lots of war crimes. And the ICC has very limited resources. Politics are about control over resources and taking decisions about how you are going to use those resources. The decision to issue one indictment, to go after one case rather than another one is a decision that is fundamentally political and so I think it's not right to say that the ICC has to issue an indictment in the case of the LRA – or to suggest that this decision was devoid of politics. It certainly didn't have to, there are many places where we can look around the globe, where the ICC could choose to use its resources.

Question

Michael Bartlett, I work for the Quakers and two questions specifically in relation to Uganda. First it regards victor's justice – in the case where the case was initially referred to the ICC through President Museveni would there be anything preventing the ICC from extending the scope of arrest warrants to indictments to include members of the Ugandan army who are guilty of war crimes or could be seen to be guilty of war crimes and secondly in relation to Uganda you talked about the Ugandan government could by prosecuting crimes itself the jurisdiction of the ICC could fall away, is it legally possible, whether or not it is desirable, would it be legally possible for the Ugandan government, what would be the effect of the Ugandan government following the United States example and withdrawing from the Rome statute?

Question

Michael Ellman, International Federation for Human Rights – in South Africa and in Argentina and Chile if there were not war crimes committed at least there were crimes against humanity yet those countries all have a Truth and Reconciliation Committee which effectively has taken most of those crimes out of the jurisdiction. Of course arguably there was probably no jurisdiction of the ICC because of the time when they were committee but what would Professor Goldstone say about the possible conflict between Truth and Reconciliation Committees and prosecution before the ICC?

Question

I am from the University of Westminster. My question is for Professor Goldstone. Actually you've been talking about the justice of how the...the Criminal Court of Justice, the decisions are very just and fair, actually my question is related to what certain issues for that to go to the Criminal Court of Justice, my question mainly related to the selectivity of issues to go to the Criminal Court of Justice. Like for instance many parts of the world have nothing, justice has never reached there. For instance in Palestine, justice has had nothing to do there and it very much appeared to me that justice or the Criminal Court of Justice just can't function without the imbalance of power within certain regions.

Richard Goldstone

Firstly, the Uganda army indictments – of course that Army is amenable to the jurisdiction of the International Criminal Court. Many people are disappointed that there has been nothing public thus far about investigations and even indictments against the leaders of the Uganda army because the evidence seems to be overwhelming that war crimes were committed by them as well. It is very important that there should be an even handed approach and let me hasten to say that being even handed doesn't mean one for you and one for you, it means dealing with similar crimes in a similar way and that was very much the position in the former Yugoslavia where it was a question of dealing with war crimes at a huge level and not saying one for you, one for you and one for you. In the end indictments were issued against all sides. I don't believe that President Museveni can withdraw his referral to the International Criminal Court. There is no basis for it in the Rome Treaty.

South Africa and crimes against humanity – there can be no question that apartheid was a most serious crime against humanity and it was declared to be such by the United Nations in

1973. It's an interesting question; I don't believe that South Africa would have got away with the amnesty provisions of the TRC today. I think that the International Criminal Court and the attitude of most of the democratic world towards crimes of that magnitude would make it virtually impossible to allow for amnesties for the army and police leaders who behaved as they did. I would prefer to see trials rather than amnesties in that sort of situation. South Africa just got away with it in 1995 and I think there were a lot of reasons for that. It was the attitude of Nelson Mandela, his popularity, and it was also very importantly the wish of the majority of the victims in South Africa to go that route; but the world has changed since then.

As far as Palestine and other areas of concern, of course there should be a truly International Criminal Court and if there was, if all members of the United Nations were parties to it then it would have jurisdiction. I agree with Leslie that it is very difficult for the prosecutor, Luis Moreno Campo to decide where to prosecute. There are unfortunately just too many war crimes being committed. I will be happy when the International Criminal Court gets involved in a non-African situation. I don't think it's good for the Court to be involved only on one continent. Ocampo has made public that he is investigating five other situations. I have no doubt at least one or more of them are Latin America and I think that would be very important to demonstrate that the ICC is interested not only in Africa but in war crimes wherever they are committed.

Leslie Vinjamuri

I have just one very quick comment. I was again listening to some people who are very deeply involved in Uganda and their comment was that well, yes Uganda formerly requested that the ICC get involved but that's not where the process started. It started on the other side.

Anthony Dworkin

I don't really have anything to add on that round of questions. I might somewhat rashly take on a question from the first round about the question of Nuremberg and aggression. I think although the notion of aggression was seen by the United States as the heart of what it was doing at Nuremberg if we look back now I think that it seems like one of the more unsatisfactory parts of Nuremberg, partly because there are serious doubts about whether aggression was a crime at the time before Nuremberg and whether it was prosecuting the Nazis for a crime that wasn't a crime when they committed it and secondly of course that it's particularly in reference to aggression that the victor's justice aspect of Nuremberg is most stark because the Soviet Union which was sitting on the bench at Nuremberg had also invaded countries during the Second World War.

Question

I am James Thackara, I have been involved in human rights legitimacy questions for various human rights groups and literally since Natan Sharansky was on the Soviet penal code, recently arranged the affidavits for the Israel Supreme Court. I think there is a huge distinction that has to be emphasised which you have already mentioned but to emphasise it further about one law and one state. I mean the Israel Supreme Court [name] described himself as having created a human rights utopia but said to me when he was in this country, incognito, that the Israel court, the Israel government can intervene and actually take things

on and off the dock at more or less at will and I fear that in America's withdrawal from the ICC or the failure to endorse it there is something similar at work. In your case you're dealing with one law and many against one or many against a very few and that involves the legal system being impervious to political intervention. There is a story that Madeline Albright used the International Court to criminalise Milosevic. I mean this case has been made several times. You, at the centre of a legal process, under these huge pressures, do you think an international court can resist political pressures? Did you have many put on you and I think the whole survival of the International Criminal Court system depends on judges of very strong character resisting political and how much political pressure do you receive?

Question

Nick Donovan from the Aegis Trust, we built the Kigali Memorial Centre and the UK Holocaust Museum. I have a question about Darfur and drawing on Professor Goldstone's experience in the oil for food programme. Given that the ICC indictments and original referrals seem to have had no short term effects in bringing Sudanese government into accepting the UN peacekeepers or into ending their role in the killings would you see some kind of oil trust fund where you could have an oil embargo on Sudan that have revenue still flowing into Sudan for humanitarian, education and social service purposes and oil still flowing out for Chinese energy security purposes as a good idea given your experience of the mismanagement and corruption in the oil for food programme?

Question

I have a question for Leslie Vinjamuri. I wondered to what extent the way you framed the issue of justice, capturing what we ended up talking about which is justice may be really key in the quality or the stability of the peace that is emerging and particularly in the context of warlords, it seems most of the conflicts nowadays involved warlords, what other strategies are available to sideline them from the political process and that you brought up. After Lamed there was a revision of the whole process which included a very strong court where essentially the warlords are now and this is often seen as one of the reasons why they have not regrouped like they did before and re-ignited the conflict.

Professor Gearty

Thank you very much. I am going to take the panel now and giving them each a little bit of time working through from Anthony to Leslie, to end with Richard and then I am just going to wrap the whole thing up. So Anthony if you have any comments?

Anthony Dworkin

My general comment – I think it has been a very good discussion and I think it shows there are a number of interlocking issues that are raised by the question of international justice. I think as both panellists have said it is a fact of life now in the contemporary world and I think it's...to pick up one of the things that I think labor was getting at that there is a question of how committed, if we are talking about international justice, whether there's a real commitment on the part of the international community to do what it takes to achieve peace in a particular situation and maybe a difference between trying to get long term substantial lasting peace and maybe more of a short term solution that requires less engagement from the international community.

The other thing is, another point that has struck me, is that the requirement for international justice can be a kind of benchmark that allows forces within a particular society that might be too weak on their own to appeal to it and it can then justify and build their strength.

Leslie Vinjamuri

To the last question, I have no doubt that you have very good answers to the question given. You know this topic very, very well, but my short answer is military force, right, indictments do not substitute for the use of military force. They are a weak substitute in many cases when the international community doesn't really want to get involved, doesn't really want to expend the energy and the resources, take the risks that it requires to get rid of powerful warlords. So indictments and trials can back up and supplement a political strategy that relies on the threat or use of military force but on their own they are a very slow and often ineffective means of disempowering very powerful warlords.

Richard Goldstone

I'll just deal very briefly with the last two of the final three questions. Firstly, political pressure - the answer is a very definite "no". I think I made it clear that had I received any political pressure I would have immediately called a press conference and made it public. I took very seriously the provision in the Security Council statute that said that the prosecutor is independent and shall not take instructions from any government or any other person. On at least one occasion I had to use it to answer complaints from the then Secretary General Boutros Ghali who found it peculiar that I didn't consult him before issuing the indictment against Karadzic and Mladic. I said to him I was very pleased that I didn't consult him because he would have, for some of the reasons perhaps Leslie might have agreed with, he would have tried to dissuade me from issuing that indictment during the war. And how wrong that would have been - but that's easy in hindsight but that's certainly the position.

As far as Darfur is concerned I am grateful for the question because of course yesterday the International Criminal Court issued arrest warrants against at least one Minister and other people in the Sudan and as was expected President Bashir immediately said this is unlawful. His arguments should be familiar to the gentleman who spoke about Nuremberg earlier. He questioned the legality of the International Criminal Court and really he has thrown down the gauntlet to the Security Council. The Security Council referred the Darfur situation to the International Criminal Court. The United States declared that what was happening there constituted genocide, rightly or wrongly, it doesn't matter but clearly if not genocide then a most aggravated forms of crimes against humanity. The question is now whether the Security Council will muster the political will to do something about it. If they don't it's going to certainly demean the credibility of the Security Council and the whole United Nations system, to allow a member state to simply ignore a peremptory resolution under Chapter 7 of the United Nations Charter.

Some states in the United States are already divesting from American corporations that are doing business in Darfur and I think that's a good thing. I would suggest that a no-fly zone should be imposed by the Security Council to stop the Sudanese aeroplanes being used against innocent civilians in Darfur. And there should be an oil embargo and certainly if

recent news accounts are accurate it may be that China is going to change its attitude, China is the main buyer of Sudanese oil and for that reason has been protecting Sudan to an extent in the Security Council but it looks as though the Olympic Games in 2008 in Beijing may persuade the Chinese that it's not worth being branded supporters of war criminals

Professor Gearty

Thank you very much, Richard. Wrapping up now, the event has been remarkable even by the standards of the Centre for the Study of Human Rights events I say partisanly. I am gutted, as they say on *Eastenders* that you can't all come and have a drink with us but that enables me to remind you that we have these MSc programmes in human rights which is the alumni group and we also have a certificate in human rights and various other things if you're interested and we do run a teaching programme as well as an events programme but the questions and answers proved quite how varied our audiences are and the extraordinary expertise that is brought to the panel discussion. So congratulations to yourselves. Congratulations to the stewards who expected about 4 people to turn up and got 400 but mainly congratulations to the three people around me here, Anthony Dworkin, whose Crimes of War Project has driven this and has been a tremendous partner and has been very, very good on the panel; Leslie Vinjamuri who has come to the Centre as visiting fellow and done a tremendous job of engaging and pushing the debate further and Richard Goldstone for having both started the debate and wrestled with the issues in a honest and clear way and taking questions as he did, as they all did. I think we should end the event with a round of applause for them.