



# NEWSLETTER

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## Inside this Issue

- 1** Human Rights and the ICC – Ms Cherie Booth QC
- 3** Human Rights in an Age of Terrorism – Prof Ivan Shearer
- 5** Australian Interns at the UN Commission on Human Rights – Simone Cusack
- 6** Australian Red Cross Inaugural Solferino Cup
- 7** Events: 2003 – So Far; Coming Up
- 8** Courses, Internships, Placements & Practice
- 9** Publications, Papers & Research
- 11** Castan Centre Members
- 12** ABL Scholarship & Centre Advisory Board

## Human Rights & the International Criminal Court

*On 16 April this year, Ms Cherie Booth QC delivered a lecture entitled ‘The International Criminal Court: Instrument of Peace or Punishment?’ at Queens Hall, Victorian State Parliament on behalf of the Castan Centre for Human Rights Law. This is a condensed version of that speech. The full paper can be found at [www.law.monash.edu.au/castancentre](http://www.law.monash.edu.au/castancentre).*

It is both a privilege and an honour to address you today. I am especially excited to be involved in a discussion about prospects and issues for the International Criminal Court. This is an opportune time for such a discussion, given that, as you know, the Court was inaugurated last month. The Rome Statute of the ICC has its flaws – the nature of the drafting process and the political issues at stake ensured that – but we have now reached a stage where the principle of individual criminal liability is established for those responsible for the most serious crimes, and where an institution has been established – on a permanent basis – to ensure the punishment of such individuals. The Court, no doubt, will serve as a painful reminder of the atrocities of the past century and the level to which humanity can stoop. I say nothing new when I tell you that it appears we are doomed to repeat history. International criminal law is

testimony to that fact. As Judge Richard Goldstone, former Chief Prosecutor at the Hague Tribunals has wryly commented, the hope of “never again” so often becomes the reality of again and again. But at the same time I am convinced that the International Criminal Court, with independent prosecutors putting tyrants and torturers in the dock before independent judges, reflects a post-war aspiration come true. My discussion with you today flows from the conviction that the International Criminal Court is our best response to the atrocities which bedevil our claims to ‘humanity’.

The Statute of the International Criminal Court was adopted on the 17<sup>th</sup> of July 1998 by an overwhelming majority of the States attending the Rome Conference. To date, the Rome Statute has been signed by 139 States and 89 States have ratified it. The Statute entered into force last year on 1 July 2002, at which time the Court’s jurisdiction over genocide, war crimes and crimes against humanity took effect.



*Nellie Castan and Cherie Booth QC after the 16 April lecture*

**Human Rights and the ICC (cont)**

The judges for the Court were chosen earlier this year in February, and were sworn in on 11 March 2003 at the inaugural session of the Court in The Hague. All of the senior elected officials of the Court should be in place and ready to take up their tasks by the summer of 2003.

The prospects for an effective, legitimate and credible international court depend, to a very great extent, on the composition of its bench. It is of singular importance that an international court be composed of judges with the *most appropriate qualifications*. That means, amongst other points, that there be representation of the principal legal systems and appropriate geographical representation, and that there be an appropriate gender balance.

The election of seven women judges to the International Criminal Court, under the strictest conditions of openness and transparency, shows that States are finally taking seriously the idea of a ‘legitimate’ international judiciary. The importance of female appointees to the Court is reinforced by the attention given by the ICC Statute to women’s issues, as compared with the very limited concern that women’s issues have received in international criminal law in the past. In the field of armed conflict history is replete with examples of women being targeted as victims of sexual assault as part of a policy of war. Rape and other acts of sexual violence have long been utilised as instruments of warfare. These victims have been let down when it has come to the prevention and prosecution of these offences, largely because sexual violence has been regarded as an accepted concomitant of war, even if it was not explicitly condoned.

At the international level it was only in relatively recent times that sexual violence against women in armed conflict came to be regarded as an important issue in



From L to R: Ms Julie Debeljak, Ms Melissa Castan, Ms Cherie Booth QC & Prof David Kinley

serious need of redress. Since 1990 international criminal law has made greater progress on women’s issues than during any other time in recorded history. The Rome Statute allows for prosecution of a wide range of gender-based or sex-based crimes, provides certain protections to victims of these crimes, and calls for the inclusion of women in the different Organs of the Court. The experiences of the International Criminal Tribunals for the Former Yugoslavia and Rwanda suggest that there are considerable advantages these women judges will bring to the International Criminal Court when it comes to the prosecution of gender-based and sex-based crimes.

More broadly, the ICC will have an effect beyond the trials themselves, and significance beyond traditional conceptions of justice. The function of a trial in the International Criminal Court is first and foremost a proclamation that certain conduct is unacceptable to the world community. In this regard, it is of singular importance to note that no one – not even a serving head of state – will be able to claim immunity from the jurisdiction of the Court.

Besides the moral condemnation of these crimes at the international level, the ICC will serve a second, and vital, purpose, namely, upholding the rule of law. One of the problems this raises is that a war crimes trial is an exercise in partial justice to the extent that it reminds us that the majority of war crimes go unpunished. We should draw some solace, I would suggest, from the fact that in a world in which a multitude of people may have become embroiled in war crimes, the punishment of each and every offender is not necessary to achieve respect for the rule of law, or to declare our disgust at the acts committed.

The third function of an ICC trial – and closely aligned with the value of upholding the rule of law – is the opportunity it creates for truth telling. Two important points, I think, need to be kept in mind. The first is that international criminal trials have a commemorative potential; they can build an objective and impartial record of events. The second point is this: proceedings before the ICC have the potential of countering the attribution of collective responsibility for acts committed by individuals.

Finally, the US claims that the Rome Statute is flawed. Certainly it is not perfect. While the Statute is a reflection of wide agreement which inevitably involved some compromises, none of those compromises undermines the basic fact that the Court will act only where national jurisdictions cannot. The UK has concluded that the liberty and well-being of its citizens will not be threatened by malicious or politically motivated arrest and indictment in a foreign land by virtue of its commitment to the Court. The absence of the US means that we all stand to lose from the full benefit of the experience of a country with the strongest commitment to the rule of law generally and expertise in criminal and international law in particular. I hope, in these circumstances, that the United States will leave the door open to future participation and, in the meantime, provide constructive support from the sidelines.

*The Castan Centre thanks Mallesons Stephen Jaques for their generous support of this event.*