WHERE SHOULD WAR CRIMES BE PROSECUTED?

Political and military leaders should be subject to trial in England for alleged war crimes committed abroad. This unequivocal and controversial contention was the subject of a keenly contested debate at the IALS on May 27, with Philippe Sands QC, Joel Bennathan QC and Alex Bates speaking for the motion, and Iain Morley QC, Jonathan Kirk QC and Rodney Dixon opposing it. Speakers were allowed eight minutes, and the event was chaired by Joshua Rosenberg, the former BBC Legal Correspondent and legal commentator who is also a trained lawyer.

Philippe Sands affirmed his support for the principle of universal jurisdiction, under which any person allegedly engaged in war crimes anywhere in the world can be subject to proceedings in any country, including England. He said the world changed in the 1940s when the Geneva Conventions and the Genocide Convention were put place, and exceptions to the universal jurisdiction principle must not be made on the grounds that the states involved are considered to be too friendly or too powerful to antagonise.

A contrary position was taken by Iain Morley, who also said the world had changed – but in 1989 when the Berlin Wall came down and led to the disintegration of the Soviet Union. A new order emerged where ad hoc international tribunals dealt with atrocities that had taken place under regimes in countries including Rwanda, Sierra Leone, the former Yugoslavia and Cambodia (the latter still being in progress). Procedure and case precedents developed in consequence. It is better to make such trials international in nature than attempt to adjudicate in England for alleged war crimes committed abroad. This point was dealt with by Philippe Sands in his summing up, who said the West must accept the risk of such prosecutions occurring. No-one should be above the law – including George W Bush, who authorised the practice of “waterboarding” which amounted to torture.

Members of the audience contributed a number of observations and opinions which reflected a broad range of views. Sceptics felt that the practical difficulties posed by staging a trial in England for alleged war crimes committed elsewhere – including persuading witnesses to attend and juries to convict – could render the whole process pointless, always assuming that politics did not intervene first. Those at the other end of the spectrum felt that putting George W Bush and Tony Blair on trial at the Old Bailey over their involvement in the Iraq war would help to prevent such conflicts in the future.

One pragmatist observed that the whole debate was sterile because this country was bound by its international legal obligations and should conform to them. Some audience members also drew attention to the presence in England of a category of individuals who have fled countries where genocide has been committed and are suspected of involvement. They cannot be sent back, but are not being investigated and remain here in limbo. If sufficient evidence against them existed, they should be tried in England.

A further criticism of universal jurisdiction was that it could be used by, for example, Arab or African states to mount trials on their own soil in order to further an anti-Western political agenda by charging politicians, military personnel etc from England and other countries with alleged war crimes. This point was dealt with by Philippe Sands in his summing up, who said the West must accept the risk of such prosecutions occurring. No-one should be above the law – including George W Bush, who authorised the practice of “waterboarding” which amounted to torture.

Joel Bennathan stressed that laws should serve people’s moral values. Juries would convict in cases involving war crimes overseas if the evidence was strong enough. Concluding the debate, Iain Morley said that the ICC existed because of the problems experienced by national jurisdictions in bringing witnesses to court and persuading juries to convict. Arguments had shifted away from universal jurisdiction and now centred round the operation of the ICC.

The motion was carried.

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