

Reflections on the SOLON War Crimes Conference

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I recently attended the first WAR CRIMES conference held by SOLON, in February 2009, at the Institute of Advanced Legal Studies. I would first like to congratulate SOLON on the calibre of speakers and delegates that this conference attracted. The organisers brought together under one roof some of the foremost experts on all aspects of war crimes from the four corners of the world. It was a veritable International Who's Who of lawyers, judges, historians, philosophers and even forensic anthropologists.

For me, one of the most notable subjects discussed was the access to justice for witnesses/victims in war crime courts. It was interesting to note the difference between The Hague and Cambodia in regards to the rights and representation of 'victims.' The creation of the Extraordinary Chambers in the Courts of Cambodia in 2006, set up to deal with the war crimes committed by the Khmer Rouge allows, for the first time, the victim's right to participate in the trials with the same legal rights as the prosecution and the defence. This is clearly not the case with the ICC or ICTY who, from what I heard, could almost be seen to seem to treat victim/witnesses as a necessary nuisance and certainly without the same rights as set out by the ECCC. There are lessons to be learned from that.

There were many debates within the seminars about the usage of the term 'victim'. In his presentation, Jose Pablo Baraybar, Executive Director of the Peruvian Forensic Anthropology Team (EPAF), made a pertinent point when he stated that perhaps, instead of the concept of victim-hood and its psychological implications, we should re-enable the survivors of war atrocities to be (in his words) 'actors' and not 'subjects' in the process healing of war-torn societies.

Listening to the speakers, an unpalatable reality was brought forcefully home: it is simply impossible for international and national war crime tribunals to right the wrongs committed against vulnerable people. All recognise that there have been 'victims' of war atrocities, but on the other hand should these people be sacrificed for

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the sake of balancing national and international interests? How useful would it be in the national interest to prosecute war crimes decades after the event? Would it not be better to attempt to foster some kind of closure in order to bring stability to that country? Lesley Abdela and many others argued that this was not the way forward but it is clearly an on-going debate. While Jose Pablo and those on the Bosnian panel pointed out that it was impossible and unrealistic to hope that all the perpetrators could be brought to trial. At a conservative estimate it would take 20 years; and the Bosnian panel honestly estimated that they had, at most, ten years before the witnesses/victims would stop being 'useful' in terms of their memories, as they aged. A shocking way of expressing it, maybe – but it was a measure of how difficult the task they face actually is, forcing on them such practical estimations. It made sense to me to debate these issues.

As a Lebanese, I recall a friend talking to me of how, during the Civil War there, when he was in the Lebanese Army, one day he was fighting for his country and shooting (to kill) Syrians and also against the militias. Then the next, he was helping to train his former enemies, who might eventually kill him, having benefitted from his training methods, because a peace treaty had been signed. It was almost like the twilight zone for him to be sleeping right next to your enemy of yesterday. But for the sake of closure he had felt he had to do it, but we forget that men like him are human beings and emotions like that are not so easily closed, just because a government signs a peace treaty. In Lebanon the only person to be imprisoned for war crimes was Dr Samil Geagea of the *Force Libanaise*, who served a sentence of eleven years, while all the other militia war lords went on to become politicians. Is that a way forward, as it has forced them to work together? Of course there were not (apart from Sabra and Chattila, which were a different matter) war crimes on the scale being seen in some places, but the massacres of Christians in the Chouf by the Druze have never been dealt with, and while it was, in one sense, part of a long tradition of hostility between the two communities, it was a shocking event when neighbours rose against neighbours and it has left a lasting legacy of distrust between the two communities. But there has been no question of prosecuting any perpetrators and even today, Christians are reluctant to return to their former houses in the Chouf. So I remain unsure about the importance of war crimes tribunals but convinced that something needs to be done – a veil being drawn over such atrocities is neither respectful nor healing. Perhaps Jose Pablo Baraybar's suggestion of reconstructing the drama for those left is the best we can hope for in the majority of cases?

Another powerful voice was Cissa Wa Numbe. He had gone around to all the villages and asked questions of them that they wanted to hear answered at the conference. Essentially, it seemed, one of the most urgent ones for them was: Why were all these war trials instituted against the weaker third world countries? How easy would it be to institute proceedings against a powerful Western nation? It was so powerful a point to make, that it really resonated with me, especially coming from such a passionate and good speaker as Cissa Wa Numbe. But all the speakers at the conference seemed impassioned about their particular subject of expertise and it was clear that they were all fighting the good fight. As long as they carry on doing so, the perpetrators of war crimes around the world will not go unpunished. Although, unfortunately, I was unable to attend the closing Round Table discussion for the ways forward in terms of policies and practices, I overheard the Honourable Shireen Fisher tell Dr Judith Rowbotham, one of the main organizers, that there must be a follow-up conference in 2011. I have to say, as an impartial observer, I second that motion. Watch this space!