

Lessons to Learn from the ICTY

David Chuter, drawing from his experience with the ICTY, shared his thoughts how the ICC 'can get it right'. First, for the ICC to work properly, it must be supported by national governments. Practical support includes a willingness to open borders, to share evidence and even to share the accused. He cautioned that we should not be quick to assume everyone will cooperate. Second, he warned against abuse of the ICC by nations and lobby groups for their own purposes. Indeed, groups lobbying for ICC action paralyzed the ICTY and Mr. Chuter suggested that the ICC should ensure the responsible behavior of non-governmental organizations. Third, he warned that the ICC would not be able to cope with all the perpetrators. That is, justice is asymmetrical and is unlikely for all the victims, especially where there are ethnic and religious divisions. Finally, he warned that we should be prepared for professional and academic negativity towards the ICC over the next two years, as we wonder why we don't yet have world peace.

As to the concrete lessons that the ICC can learn from the experience of the ICTY, David Chute made the following suggestions. First, prove the crimes took place. Evidence must be collected from scratch, witnesses must be found and protected, and one cannot rely on media or groups for evidence because they have agendas. Second, link the crimes to someone you think is responsible. Somehow the link must be made to the superiors who gave the orders. Third, the ICC will need people with very special skills – familiar with political, military and criminal analysis, but also with a legal background. These people must come from all the ICC Member countries, whereas right now most are Western anglophones. Finally, the ICC will need many judges of different nationalities, all with a background in international criminal and human rights law.

Canada's next steps

From his vantage point as 'Special Advisor on the International Criminal Court' for the Federal Government, Irwin Cotler discussed Bill C-19, currently in Committee in the House of Commons that is designed to raise the public consciousness about the ICC. Drawing on the Bill, Prof. Cotler suggested Canada and Canadians can undertake the following to promote and support the Rome Statute: first, identify those states that are open and willing to sign and ratify the Rome Statute, second, use Canada's good offices and multilateral connections to promote ratification; third, secure a like-minded group and use to broaden the scope and power of the ICC; fourth, engage Canada's Cabinet Ministers as to the issues; fifth, engage other Parliamentarians in the international arena and finally, mobilize civil society.

4. CONCLUSIONS/POLICY OPTIONS

- The ICC's lack of jurisdiction over the custody of the accused, and over the nationality of the victim could be reviewed by Canada. Such a change to the ICC's jurisdiction may help to garner American support for the ICC. Likewise, Canada can emphasize