

Guest Lecture Series on International Humanitarian Law

Prof. Antonio Cassese

"A Critical Appraisal of International Criminal Tribunals"

(October 29, 2007)

The Minerva Center for Human Rights at the Hebrew University of Jerusalem and the International Red Cross, in cooperation with the Konrad Adenauer Foundation, continue their International Humanitarian Law Guest Lecture Series, hosting in Jerusalem leading international experts in the field.

On October 29, 2007, the Series hosted Professor Antonio Cassese, Professor of International Law at the University of Florence. Professor Cassese is one of the world's most renowned experts on international law, and served as the first President of the International Criminal Tribunal for the former Yugoslavia (ICTY).

Prof. Cassese acknowledged the warm opening remarks of Mr. Rolf Behrens, Deputy Director of Konrad-Adenauer-Stiftung Israel – and noted his gratitude to Germany for the crucial support of its Foreign Minister in the establishment of the ICTY.

Prof. Cassese began by addressing the question, why international criminal tribunals were necessary in cases of genocide and crimes against humanity – why was it not sufficient that the territorial judge have jurisdiction, as with any other crime. He noted that national judges rarely take action in these situations, for three main reasons: (1) such crimes usually occur in a wider context, they are committed by groups rather than individuals, they reflect a systemic rather than individual criminality – and indeed often there are links between the judiciary and the perpetrating government; (2) the crimes are against mankind, not just the specific victims – the nature of the crimes may be trivialized when only one state tries the perpetrators; and (3) though the 1949 Geneva Conventions obligate states to try war criminals present in the contracting states, until 1994 not one state did so. Thus – the need for international tribunals.

Prof. Cassese noted that while international tribunals are impartial and independent, they have some serious flaws, especially: (1) The enormous expense (around \$100 million per year), resulting from the huge number of judges, prosecutors, legal officers and investigators, the need to translate into a few languages all proceedings and documents, and the necessary physical infrastructures, including courtrooms, prisons and offices. (2) The excessive length of the proceedings – the average length of one trial is 1.5-2 years. In part this results from the complexity of the accused crimes: conviction of crimes against humanity requires not only proving the commission of crimes, but also establishing their context, scale and systematic nature, as well as the accused's effective command over the troops that committed the atrocities. In addition, the judges come from different countries and legal traditions, speak different languages – and many are academics, inexperienced in how trials actually take place. However the most crucial factor in the length of the proceedings was the adoption of the adversarial system – this slows down the proceedings considerably. (3) Whereas the vast majority of cases in common law countries are plea bargained, resulting in guilty pleas and cases not going to trial, at the international level the terrible stigma of the crimes precludes this. (4) Because of the enormity of the crimes, and the fear that prisoners will flee – bail can not be granted. As a result, some of the people on trial spend 5 years in jail before a final verdict is rendered. (5) The absence of enforcement mechanisms – whenever evidence is needed or arrest warrants are issued, the cooperation of the host countries is needed. (6) International tribunals only pass judgment on the vanquished ("the Nuremberg syndrome"). (7) Tribunals do not deal with two major current international crimes – those of terrorism and of state aggression. (8) International tribunals have limited impact on the relevant population, as they usually sit outside the affected country, and the most serious cases are tried in the Hague because of the inability to guarantee the accused's safety otherwise.

Summing up, Professor Cassese emphasized that we need international tribunals, but we should be aware of their many shortcomings and seek ways to address them.

The lecture was followed by a lengthy question and discussion period. Some 80 people attended, at the Hebrew University of Jerusalem.