

International

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EVERY time the world learns of some unspeakable outrage from a be-nighted battle zone, the cry goes out that such things must never recur. That was the reaction after the Rwandan genocide; after the ethnic cleansing, mass killing and rape perpetrated in former Yugoslavia; after the terrible atrocities of Sierra Leone and Congo; and after the targeting of civilians in Sudan's Darfur region. So to its supporters, the opening eight years ago of an International Criminal Court (ICC) based at The Hague, ready if no one else will to arrest and try the worst perpetrators of such crimes, was a step in the right direction. Yet as they gather in Kampala, Uganda, on May 31st for a two-week review of the ICC's workings, the 111 states that accept its jurisdiction face big responsibilities.

Their hard look at the court's role and record comes as the ad-hoc tribunals set up to try those responsible for atrocities in Rwanda, Yugoslavia and Sierra Leone (before the ICC existed) are winding down. As their permanent replacement, the ICC is gaining authority as the proper court of last resort for three sets of crimes: crimes against humanity, war crimes and genocide. Its record in handling cases it has taken on so far will be under close scrutiny.

Meanwhile, the Kampala conference must also decide what, if anything, to do about a fourth crime listed in the court's founding Rome statute: aggression. A row about that could yet drown out all the useful work delegations have been preparing for improving the ICC's performance and encouraging more countries to join.

In fact, there is much else to discuss. One criticism of the ICC has been its slowness in bringing cases to trial. The court has issued 13 warrants so far, including one controversially for the arrest (on charges of alleged war crimes and crimes against humanity) of Sudan's president, Omar al-Bashir. However, only four arrests have been made, and only two trials are under way. The earlier tribunals managed to process many more cases, more quickly.

If the ICC is to move into higher gear, it needs more co-operation from all its members and supporters. As its chief prosecutor, Luis Moreno-Ocampo (above, right), likes to remind critics, the ICC has no gumshoes or handcuffs of its own; members must help to bring in the accused. But Mr Ocampo's decision to indict Sudan's leader has had a mixed reaction in the neighbourhood. It is popular among African human-rights groups, and supported by some African governments, but it has offended others. A few of the court's African members

have threatened to curtail co-operation with it.

Indeed, so far only Britain has formally adopted all of its obligations under the 1998 Rome statute, from witness protection to sentence enforcement and pernickety rules on privileges and immunities. Meanwhile, many of the 111 members and some non-members (25 of them will be at Kampala as observers) have used the creation of the court as a catalyst to revise their criminal law and to rework guidance to their soldiers; others have barely begun.

Spurring the construction of strong national courts is part of the ICC's mission. For it can act only where national courts have proved unwilling or unable to do so. And there is wide recognition that justice works best when it is brought as close as possible to victims, rather than dispensed in the remote courtrooms of The Hague.

Of the five sets of cases taken up by Mr Ocampo, Congo, the Central African Republic and Uganda asked for the ICC to act; the case of Sudan's Mr Bashir was referred directly by the United Nations Security Council; and a formal probe of Kenya's post-election violence was opened this year only after its rival politicians could not agree to let their own courts do the job.

Among the 25 observer delegations also in Kampala from countries that have not ratified the Rome statute, America's will be watched most closely. Unlike his predecessor, George Bush, who was often hostile to the court, Barack Obama is in principle readier to help, for example by digging up information that would bring human-rights abusers and war criminals to trial and tracking down fugitives.

But like other holdouts, including Russia, China and India, America wants to be sure that the court will avoid trampling into politics. Hence the sensitivity about prosecuting “aggression”. In contrast with the other crimes under the court’s remit, no definition of aggression could be agreed on when the court was launched, and none exists in national legislation. Eight years on, there is now a rough consensus on a definition, albeit a loose one, but none on how to turn the charge into a prosecutable crime in court.

The tortured formula on the table in Uganda is “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.” A rough translation: we’ll know it when we see it.

Vagueness is not the only worry. Who decides what is a “manifest” violation of the charter that could start ICC action? The Security Council, which under the charter is supposed to settle matters of war and peace? That would please outsiders, like America, China and Russia, and worried insiders Britain and France: in other words, the council’s permanent members. But it offends others, from Brazil, which resents big-power bossiness, to Germany which values the ICC’s independence.

Then there are more fundamental questions. The aim of the court is to prosecute and hopefully deter egregious human-rights abuses. But the crime of aggression calls into question a state’s motives for using force, rather than aiming to uphold rules about how force is applied. Trying to identify aggressors could

hopelessly politicise the court and undermine its credibility. Another risk is that the fear of being prosecuted for “aggression” would deter those most often called on to protect civilians from the worst abuses.

In part thanks to the court, almost every country now pays lip service at least to the idea that some crimes can never be justified. That gives the ICC moral force. But defining aggressors—manifest or otherwise—promises to be hugely divisive. And even if the talks in Kampala were to patch up a compromise, America’s Congress might then grow even more wary of the court.

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Walesa, back on the warpath IF HUMAN rights mean anything at all, they apply, presumably, to every single person on the planet, regardless of their nationality, sex or political leanings. And people who root for human rights should all be on the same side.

So much for the theory. In the real world, the groups and individuals who devote themselves to that cause seem ever more divided. The UN Human Rights Council infuriates its Western members by focusing on Israel, ignoring the sins of its own leading members and bowing to Islamist pressure on religious questions.

Meanwhile the main NGOs in the field face internal strains. Amnesty Inter-

national, a London-based body with over 2m members, was publicly criticised by one of its own senior campaigners in February, for sharing platforms with Moazam Begg, a Briton who spent time in Guantánamo Bay. And New York-based Human Rights Watch has faced dissent from erstwhile supporters for being harsh on Israel. Last October, one of its founders, Robert Bernstein, said HRW had failed to take account of Israel's status as an open society. Like Amnesty, HRW said Israel and its Hamas foes had both violated the laws of war during Israel's operation in Gaza. Mr Bernstein said that Israel's assertion that it was acting in self-defence against Hamas rockets should have been factored in.

Amnesty has also faced some criticism from old-school human-rights advocates for shifting the focus to economic woes, away from the old concerns of free speech and due legal process. But the greater part of its new 2010 report looked at human rights in the classic sense. It said China had stepped up pressure on dissidents and deplored "mounting repression" in Iran. It named Brazil, Jamaica, Colombia and Mexico as places where security forces engaged in unlawful killings, adding that in the United States "human rights violations...related to counter-terrorism persisted." The most welcome developments, it said, were in the field of justice: the arrest in Germany of a Rwandan wanted over atrocities in his own country, and the jailing of Peru's ex-president, Alberto Fujimori, for human-rights abuses. More ideologically, it said billions of poor people lost out on rights like education and housing.

A different note was struck at a spectacular human-rights festival, held in Norway at the end of April, where veterans of human-rights struggles—with a preponderance of anti-communists and victims of harsh Islamic regimes—were

invited to tell their stories. The Oslo Freedom Forum was co-chaired by Poland's ex-president, Lech Walesa, and anti-Soviet gadflies like Vladimir Bukovsky and Garry Kasparov featured prominently—to the confusion of Russia's president, Dmitry Medvedev, who was staying in the same hotel.

The Oslo shindig—launched in 2009, and on its way to becoming a human-rights equivalent of the Davos economic forum—is the brainchild of Thor Halvorssen, a New York-based film-maker and activist with family roots in Venezuela and Norway. He also runs a small Human Rights Foundation (focusing mainly on the sins of leftist regimes in Latin America). With the confidence of a new kid on the block, he argues that the big players in human rights have become too bureaucratic, and disinclined to do bold things like pay clandestine visits to repressive countries. “They work in these big marbled offices, where's the heart in that?” he complains.

Given his conservative ideas, Mr Halvorssen's list of heroes and rogues might differ from that of say, Claudio Cordone, the acting head of Amnesty. But as Western governments (including America's) give less priority to human rights, NGOs seem likely to play a bigger role. And perhaps a bit of competition among them would do no harm.

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Militancy in Mauritius THEIR crimes were “gross indecency” and “unnatural acts”. Their sentence was 14 years’ hard labour: one intended, said the judge, to scare others. He has succeeded. A court in Malawi last week horrified many with its treatment of Steven Monjeza and Tiwonge Chimbalanga, a gay couple engaged to be married. The two men are the latest victims of a crackdown on gay rights in much of the developing world, particularly Africa.

Some 80 countries criminalise consensual homosexual sex. Over half rely on “sodomy” laws left over from British colonialism. But many are trying to make their laws even more repressive. Last year, Burundi’s president, Pierre Nkurunziza, signed a law criminalising consensual gay sex, despite the Senate’s overwhelming rejection of the bill. A draconian bill proposed in Uganda would dole out jail sentences for failing to report gay people to the police and could impose the death penalty for gay sex if one of the participants is HIV-positive. In March Zimbabwe’s president, Robert Mugabe, who once described gay people as worse than dogs or pigs, ruled out constitutional changes outlawing discrimination based on sexual orientation.

In many former colonies, denouncing homosexuality as an “unAfrican” Western import has become an easy way for politicians to boost both their popularity and their nationalist credentials. But Peter Tatchell, a veteran gay-rights campaigner, says the real import into Africa is not homosexuality but politicised homophobia.

This has, he argues, coincided with an influx of conservative Christians, mainly from America, who are eager to engage African clergy in their own domestic battle against homosexuality. David Bahati, the Ugandan MP who pro-

posed its horrid bill, is a member of the Fellowship, a conservative American religious and political organisation. “Africa must seem an exciting place for evangelical Christians from places like America,” says Marc Epprecht, a Canadian academic who studies homosexuality in Africa. “They can make much bigger gains in their culture wars there than they can in their own countries.” Their ideas have found fertile ground. In May this year, George Kunda, Zambia’s vice-president, lambasted gay people, saying they undermined the country’s Christian values and that sadism and Satanism could be the result.

Discrimination against gays, in Africa in particular, risks undermining the fight against HIV/AIDS. In February, those suspected of being gay were targeted in Kenya in mob violence at a government health centre providing HIV/AIDS services. Bishop Joshua Banda, chairman of Zambia’s National AIDS Council, said that donor countries’ efforts to speak out against violations of gay rights were against Zambia’s “traditional values”. The increasing crackdown on gay rights in Africa will be a disaster for public health, according to Mr Epprecht, as gay people go underground and do not get treatment for HIV/AIDS.

A hideous picture

How homosexuals fare

Country	Status	Penalty or social sanctions
Iran	illegal	death for men; 100 lashes for women, death on fourth conviction
Nigeria	male illegal; both illegal in areas under <i>sharia</i> law	<i>sharia</i> areas: up to death for men, up to 50 lashes and six months in prison for women; for men elsewhere, up to 14 years in prison
Afghanistan	illegal	maximum of death penalty; no known cases of death sentences since the end of Taliban rule
Uganda	illegal	up to life prison sentence*
Malawi	male illegal	up to 14 years in prison, with or without corporal punishment
Malaysia	illegal	fine, prison sentence two to 20 years, whippings
Jamaica	male illegal	prison and hard labour for up to ten years
Zimbabwe	male illegal	fine, up to a year in prison
Morocco	illegal	fine, six months to three years in prison
Lebanon	illegal	up to a year in prison
Iraq	not illegal	extrajudicial executions, kidnappings, torture, rape
South Africa	legal since 1994	beatings, rape, murder

Source: International Lesbian, Gay, Bisexual, Trans and Intersex Association

*Bill proposed in October 2009 would introduce the death penalty

The problem goes beyond Africa and is more than one of state-sponsored homophobia. In Iraq, for example, homosexuality is legal. But in 2009 Human Rights Watch described the persecution that men suspected of being gay there face, including kidnappings, rape, torture and extrajudicial killings. In the aftermath of the 2003 invasion, there has been a growing fear of the “feminisation” of Iraqi men. The Mahdi Army, a Shia militia, has played on these fears and, claiming to uphold religious values and morality, offered violent “solutions”. Members of the Iraqi security forces have also been accused of colluding in the violence.

South Africa was the first country anywhere to ban homophobic discrimination in its constitution. It is the only country in Africa to allow gay marriage. In formal legal terms, it is a beacon for gay rights, says Mr Tatchell. But the

growing phenomenon of “corrective rape” both there and in Zimbabwe, where women are assaulted in an attempt to “cure” them of lesbianism, suggests these laws often fail on the ground. As worrying to campaigners as the violence itself is a reluctance by the authorities to acknowledge that the attacks are motivated by homophobia. In April 2008 Eudy Simelane, a South African football player who was a lesbian, was gang-raped and stabbed to death. Two men were convicted of her murder but, in his sentencing, the judge denied that Ms Simelane’s sexuality played a part in the crime.

Hopes rose a little in June 2009 when India overturned its 149-year-old sodomy law but since then the global trend seems to have been in the opposite direction. Campaigners argue the proposed laws have implications beyond gay rights. How countries treat one particularly vulnerable group is a good measure of how they will act towards the rest of their citizens.