

# EXCHANGE

## CHAMBERS

As with all auspicious and historic declarations and treaties, the Rome Statute which was adopted by the General Assembly of the United Nations on this day in 1998, opens with a rousing preamble of statements that should be self-evident truths but which sadly need to be repeated, protected and advanced:

“Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,”

The adoption of this seminal treaty, which created the International Criminal Court and with it a permanent space for the trial of individuals alleged to have committed crimes of genocide, crimes against humanity, war crimes and the crime of aggression, is why we celebrate today as the “World Day for International Justice.”

This year of course marks the twenty fifth anniversary of the adoption of the Rome Statute, a treaty which is but the most recent affirmation of the endeavour for justice for such crimes. Modern efforts to bring justice for crimes committed during conflicts include the Nuremberg Trial<sup>1</sup> and the Tokyo Tribunal<sup>2</sup> both of which addressed some of the atrocities committed during World War II, and more recently tribunals and special courts to address atrocities committed during conflicts in Cambodia<sup>3</sup>, Sierra Leone<sup>4</sup>, the Former Yugoslavia<sup>5</sup> and Rwanda<sup>6</sup>.

Each of these tribunals has delivered justice but can also be criticised for failures to do so in other respects. For example, the International Criminal Tribunal for Rwanda was the

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<sup>1</sup> <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.icj-cij.org/sites/default/files/documents/library-of-the-court-en.pdf>

<sup>2</sup> <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.legal-tools.org/doc/8bef6f/pdf>

<sup>3</sup> <https://www.eccc.gov.kh/>

<sup>4</sup> <https://rscsl.org/>

<sup>5</sup> [https://www.icty.org/#:~:text=The%20International%20Criminal%20Tribunal%20for%20the%20former%20Yugoslavia%20\(ICTY\)%20was,the%20Balkans%20in%20the%201990s.](https://www.icty.org/#:~:text=The%20International%20Criminal%20Tribunal%20for%20the%20former%20Yugoslavia%20(ICTY)%20was,the%20Balkans%20in%20the%201990s.)

<sup>6</sup> <https://unictr.irmct.org/en/tribunal>

first international tribunal to deliver verdicts of genocide against individuals and, the first to recognise rape as a means of perpetrating genocide. The International Criminal Tribunal for the Former Yugoslavia delivered verdicts of genocide against several individuals in respect of the slaughter of over 7,000 mostly Muslim men and boys at Srebrenica. Conversely, both international tribunals established to try criminal offences committed during World War II largely failed, with the notable exception of rape committed in Nanking, to address any crimes of rape and no charges have ever been brought in respect of the thousands of women held in sexual slavery by the Japanese military, the so-called “comfort women.”<sup>7</sup> Further, the Tribunal for the Former Yugoslavia when trying Radovan Karadzic, the political and military leader of the Bosnian Serbs, failed to follow the example set by the Rwandan tribunal and did not convict him of a charge of genocide based largely on systemic rape of Muslim and Croatian women held in camps across the territory.

The relative failure of these various international courts properly to respond to crimes of sexual violence committed during conflicts has been the subject of examination by academics and practitioners applying Feminist Legal Methodology to the judging aspect of such cases.<sup>8</sup> Applying this methodology can arguably result in a different outcome to the trial but even when that does not happen it alters the focus and reach of the judges’ determinations bringing in voices that otherwise have not and might not be heard. How Feminist Legal Methodology might be applied to the process of judging allegations of genocide, crimes against humanity, war crimes and the crime of aggression was recently explored by judges and staff of the International Criminal Court and the International Court of Justice with academics and practitioners at a workshop in The Hague.<sup>9</sup> Hopefully the application of these legal methods in the preparation and prosecution of the case, as well as in its judging, will ensure that voices of those who are subjected to such atrocities will be heard.

Whilst the reason for celebrating today as the “World Day of International Justice” is founded on the issue of international criminal justice relating to conflicts we should consider “international justice” in its wider forms. Doing so might encourage us to look at justice in respect of the international slave trade upon which certain nations grew rich by the abominable treatment of others simply as property and colonialism prospered. We might consider whether “ecocide,” defined variously<sup>10</sup> as “the destruction of the natural environment by deliberate or negligent human action” should indeed, as was first envisaged when the Rome Statute was drafted, be included in the statute as a crime

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<sup>7</sup> See: <https://www.usip.org/publications/2022/09/guide-understanding-history-comfort-women-issue>

<sup>8</sup> See “Feminist Judgments in International Law” edited by Hodson and Lavers, published by Hart:

<https://www.bloomsbury.com/uk/feminist-judgments-in-international-law-9781509914456/#:~:text=Description,in%20light%20of%20feminist%20perspectives>,

and in particular chapter 16 where write a dissenting judgment in respect of the trial of Radovan Karadzic

<sup>9</sup> See post: [https://www.linkedin.com/posts/exchange-chambers\\_barrister-feminist-legal-activity-7081633370815766528-pQJJ?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/exchange-chambers_barrister-feminist-legal-activity-7081633370815766528-pQJJ?utm_source=share&utm_medium=member_desktop)

<sup>10</sup> In 2021 a panel of legal experts from around the world led by Professor Philippe Sands KC drafted the following definition for a crime of ecocide “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused by those acts”

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against humanity. Linked to this issue, and against the backdrop of excruciating heat across southern Europe and other parts of the world, and devastating floods and forest fires around the globe, we might tackle the issue of so-called ‘climate justice’ – the threats to people living in low-lying island states in the Pacific Ocean, the harms that are currently being felt by extreme weather, the threat of continuing and future devastating climate events, who should be called to account for them but perhaps most pressing, how funding is made available now to protect the most vulnerable.

International justice is about respecting, protecting and fulfilling the human rights and dignity of all individuals. Those rights include the right to life, the right not to be subjected to physical harm, torture or cruel, inhuman or degrading treatment, not to be held in slavery, and to live in a healthy and sustainable environment. Each of these rights are variously being denied to those who are held in ‘modern slavery,’ and to those facing the effects of ecocide and climate change.

Properly considering the threats to these rights should, I contend, engender outrage and demand justice be rendered as a matter of urgency. In saying that I rely upon the observation of Benjamin Franklin, one of the founding fathers of the United States of America that, “Justice will not be served until those who are unaffected are as outraged as those who are” and trust that being outraged will propel us to action.

Today it is time to be outraged and to act upon that outrage to achieve justice. We should strive for justice at the international level but also at the national level and close to home, in our schools, in our workplaces, in our communities where, as Eleanor Roosevelt noted, our universal human rights begin.