

International Justice Day

On 17 July, the Foreign and Commonwealth Office and the British Institute for International and Comparative Law, in association with Temple Garden Chambers and Debevoise & Plimpton LLP, held a conference on the occasion of the 15th anniversary of the International Court on the theme of '**International Criminal Justice - Achievements and Challenges, in Syria and Beyond**'. This one day event gathered a large invited audience of private practitioners, senior government legal and policy officials, academics, parliamentarians, think tanks and non-governmental organisations, as well as media professionals for an honest and open, off the record discussion.

The day opened with a screening of '[Syria's Disappeared: The Case Against Assad](#)', by Afshar Films first screened on Channel 4, which presents a haunting account of torture suffered by individuals detained by the Syrian regime. The documentary includes interviews with torture survivors and family members of those missing or known to have been killed in Syrian jails. It also reminds us that the fate of many detainees remains unknown, despite ongoing attempts from their relatives to obtain information. Gathering evidence of the crimes committed, such as through the interviews conducted in the documentary and by UN agencies or other organisations, will be key in prosecuting the alleged perpetrators. In a context such as Syria, where the conflict has continued for over six years, gathering and preserving evidence for future prosecutions or other truth or recording accountability mechanisms is key. The role of the newly established International, Impartial and Independent Mechanism (IIIM) in compiling evidence of the crimes committed in Syria for use by international or domestic courts with jurisdiction was welcomed as an innovative approach by participants.

The Attorney General, the Rt Hon Jeremy Wright QC, introduced the discussion on prosecuting universal jurisdiction crimes offering a practical view of some of the issues likely to arise when prosecuting crimes committed in conflict areas in our domestic courts. Although these cases will often present significant and sometimes unique challenges, he emphasised that prosecutors in this country can and will bring domestic prosecutions for offences committed during conflict where the evidence is available and our domestic courts have jurisdiction to do so. He made clear, however, that the fundamental precursor to all this work is the availability of reliable evidence and so the key to ensuring that the perpetrators are held to account and that victims receive justice is gathering and preserving the evidence left behind. You can access the speech online: <https://www.gov.uk/government/speeches/attorney-generals-speech-at-the-international-justice-day-event>

Interventions highlighted the difficulties associated with bringing alleged perpetrators of crimes committed in Syria before the International Criminal Court (ICC) and the UN dynamic and political constraints. Absent a referral from the UN Security Council, the ICC does not have jurisdiction over crimes committed by Syrians in Syria (as Syria is not a State party of the ICC). A attempt in 2014 in the UNSC to refer the situation in Syria to the ICC was blocked by Russia and China. Given that prosecution before the ICC is at present unlikely given the limits to the Court's jurisdiction and the political context, domestic prosecutions could play an important role in pursuing justice for the victims in Syria. Prosecutions are being brought against senior Syrian officials in Spain and Germany, and may provide innovative routes to ensure criminal accountability. Challenges associated with prosecuting international crimes at the domestic level, on the basis of universal jurisdiction or passive personality, were highlighted through discussion of a number of cases such as *Colvin v Syria*. The discussions also brought to the fore the issues associated with bringing justice to the victims of

international crimes. In the Syrian context, some of the negative ripple effects on the demography of those detained, consisting mostly of adult males, for women and children, and for Syrian society as a whole were underlined: limited capacity for the wives of the disappeared to inherit property or take decisions for their children, and the discontinuation of education or early or forced marriage for children of the disappeared. With regard to reparations for the victims, one key issue is to include in any remedy mechanism those who have fled the country, as Syria has led to an unprecedented number of displaced persons. Another issue is that victims need support right now and will not expect to wait for the perpetrators to be brought to justice before receiving reparation, such as rehabilitation through medical care for example. **Both are interlinked and require parallel efforts** Panellists debated questions of “peace versus justice”, and the crucial issues of timing. Justice for all Syrians, including mechanisms for truth and reparations, depend on an end to the fighting and the discussion included whether sustainable peace is only achievable if it includes meaningful access to justice.

Using Syria as a case study allowed for a challenging debate on international criminal justice. In her closing address, the President of the ICC, Judge Silvia Fernández de Gurmendi reminded participants of the achievements of the Court over the past 15 years and responded to the challenges faced by the Court and the criticisms voiced against it. She outlined some of the achievements of the Court, including rulings on command responsibility, conscription of children, sexual violence in conflict, destruction of cultural heritage and innovative measures to support victim participation. Addressing criticisms levelled at the Court, the President recalled that the jurisdictional challenges faced by the Court flow from the fact that it was established by an international treaty, which States must choose to join. She called for further efforts to be made to increase the number of ratifications of its Statute. She addressed necessary reforms that are being made to improve the workings of the Court, but underlined that the Court’s success was dependent on the support and cooperation it receives from the international community.

In addition to the President of the ICC, participants included: Sara Afshar (the Director and Producer of the Afshar Films documentary, 'Syria's Disappeared: The Case Against Assad') , Catherine Amirfar (Debevoise & Plimpton and Co-Chair of the firm's Public International Law Group), Sareta Ashraph (Former Analyst on the Commission of Inquiry on the Syrian Arab Republic), Toby Cadman (co-founder and Head of “Guernica 37 International Justice Chambers” in London and co-founder of “The Guernica Centre for International Justice”) , Andrew Cayley CMG QC (Temple Garden Chambers and the United Kingdom's Director of Service Prosecutions), Shehzad Charania MBE (Head of International and EU Law at the Attorney General’s Office, and International Lawyer to the Prime Minister’s Office), Nicola Cutcher (Co-Producer of the Afshar Films documentary, 'Syria's Disappeared: The Case Against Assad'), Alexander El Jundi (legal adviser to the Syria Office of the High Commissioner for Human Rights), Dr Carla Ferstman (Director of REDRESS), Scott Gilmore (Center for Justice and Accountability), Dr Devika Hovell (London School of Economics), Karim Khan QC (Temple Garden Chambers, President of International Criminal Court Bar Association (ICCBA)), Professor Robert McCorquodale (Director of the British Institute of International and Comparative Law), Fiona McKay (Open Society Justice Initiative), Dr Matthew Preston (Foreign and Commonwealth Office), Stephen J. Rapp (Distinguished Fellow at the United States Holocaust Memorial Museum’s Center for Prevention of Genocide and at The Hague Institute for Global Justice), Paul Seils (Vice President of the International Center for Transitional Justice), Christian Turner CMG (UK Deputy National Security Adviser), Deb Walsh (Deputy Head of the Crown Prosecution Service Special Crime and Counter Terrorism Division and the Head of the Counter Terrorism Division), Peter Wilson CMG (Ambassador and Deputy Permanent Representative, UK Mission to the United Nations, New York and

Ambassador-designate, The Hague), Elizabeth Wilmshurst CMG (Distinguished Fellow, Chatham House), and the Rt Hon Jeremy Wright QC (Attorney General, Conservative MP for Kenilworth and Southam).