AMICC: Terrorism and the International Criminal Court

The Worst Terrorist Crimes Are Covered By the Rome Statute

Like those who commit genocide, terrorists are the "common enemies of mankind" and under Article 7 of the Rome Statute creating the ICC any individual or group that carries out a "widespread or systematic attack directed against any civilian population" commits "crimes against humanity" and may be prosecuted before the Court. As a legal concept, "terrorism" is evolving and most governments – including the United States – felt that "terrorism" per se should not be included in the Statute. But the most powerful argument against including an explicit "terrorism" category was that the worst terrorist crimes were already included because they constituted "crimes against humanity" under Article 7.

Terrorist Attacks Like the September 11th Attacks Can Be Prosecuted Before the ICC

The jurisdiction of the Court is not retroactive, but if the Court been in existence those responsible for these systematic and widespread attacks on civilians on September 11th or at the US embassies in Kenya and Tanzania could have been prosecuted before the ICC. Mary Robinson, United Nations High Commissioner for Human Rights and former President of Ireland notes that the September 11th attack was covered "both because of the nature and scale of the attack, and because it was aimed against civilians." She added that with the creation of the ICC we will "equip ourselves with the means to deal with such horrors as that of 11 September in the future."

Likewise, the chief US negotiator at the Rome Conference, Amb. David Scheffer, has written that "[t]he long war against terrorism will be incompatible with any American effort to oppose ...the ICC. If only in its own self-interest, the United States will want to collaborate with its allies and friends around the world and explore the utility of the ICC as a potent judicial weapon in the war against terrorism" (emphasis added).

The ICC is a Potent Weapon Against Terrorism

As in other areas, the Rome Statute defers to the right of governments to act against terrorists in their own national courts. However, previous efforts to bring terrorists to justice have frequently led to delays and sharp controversies over extradition, venue and the appropriate law to be applied, as in the case of the Lockerbie prosecutions and other cases where accused terrorists were seized abroad and then prosecuted in the US. In the future, there will undoubtedly be many occasions in which *the surest and swiftest route for the prosecution of terrorists* will be before an international tribunal with *widespread international support and legitimacy*. Moreover, it should be remembered that the majority of the victims in the US embassy bombings were not Americans, and that the citizens of dozens of nations were killed on September 11th. *The ICC represents the best means for the international community to jointly express its revulsion for terrorism and to cooperate in bringing terrorists to justice*.