

*London-based human rights barrister **GEOFFREY ROBERTSON** delivered an international keynote address to the 2nd Australia and New Zealand Refugee Trauma in Recovery Conference in Brisbane over four days in March. At the close of the conference, the founder and joint head of Doughty Street Chambers spoke with **KAREN COLLIER** exclusively for Refugee Transitions on how, as a movement, we can strengthen the efficacy of international human rights mechanisms. As he continues to traverse the globe defending human rights and leading the fight against torture, Robertson shared a few of his thoughts on where he finds hope during these dark times.*

A reason for hope



KC: How was your experience participating in the 2nd Australia and New Zealand International Refugee Trauma in Recovery Conference?

GR: It's a wonderful conference and it's terrific that people who are assisting immigrants and refugees can get together and talk about the importance of their work and to learn different tactics and techniques. There are problems within – for example, offering therapy to people who are naturally suspicious of authority figures, given their experience – that you only get at the sharp end. I'm a lawyer so I'm good with words, but words are not important when you are in a refugee camp. I mean the law is not important, it's what works in practice. It was wonderful to address an audience of 500 school students who were 16 or 17. They are the very people we must encourage, and I thought that was an innovation that I'd never had before at this sort of conference, so the organisers are very much to be congratulated for it.

Is the Convention Against Torture still relevant today?

It still is relevant, it's a great document, it's part of the international rules-based order that emerged after the Second World War when the most horrific tortures were seen – committed by the Nazis in relation to Jews, Roma, homosexuals in the concentration camps, and by the Japanese against, in particular, Australians, who were worked to death or marched to death.

The Universal Declaration of Human Rights, which emerged in 1948, categorically condemned the use of torture. But the Declaration was not law and torture continued, first in Algeria by France, [which] widely tortured members of the anti-colonial movement barbarically.

France developed waterboarding and developed the use of electric shocks to the genitals. Then, of course, Britain used inhumane methods against the IRA. But I think the worst forms of torture came in Latin America, particularly by General Pinochet in Chile. It was widespread use of barbaric torture, against young leftists for the most part, that called into being the Torture Convention in 1984. As a Convention it is law and 165 states have now ratified it, which gives it a great deal of force. It defines torture and it prevents, for example, sending refugees or immigrants back to countries which will torture them or are likely to torture them. It's been quite effective in that respect.

You have said that Australia is behind the rest of the free world. In the *Australian Quarterly* you recently referred to the Magnitsky Act and said that “if all advanced democracies adopted such laws and pooled information and target lists, the pleasures available to

the cruel and corrupt would be considerably diminished”. What is the Magnitsky Act and why does Australia need one?

The Magnitsky Act is a law named after a man who was tortured to death in a Russian prison after exposing a criminal behaviour by the very policeman who put him in prison. The idea behind the Magnitsky Act is that they use local law, not international law, but adopt international law definitions in order to punish as best we can those people in foreign countries who have made their money out of abusing human rights, so that there are sanctions that stop them coming into the free world, using its banks, sending their children to its schools or their parents to its hospitals.

Particular kinds of Magnitsky laws have now been passed, first by President Obama in 2012. Trump has allowed them to continue and indeed has included the 15 killers from Saudi Arabia who killed Mr Khashoggi at the Saudi embassy in Istanbul.

Canada has a very good Magnitsky Act. Britain, after the attempt to assassinate the Skripals in Salisbury, has passed a Sanctions Act that enables human rights abusers to be sanctioned. The European Union has passed one. The hope is that over the next few years the countries of the free world will have sanctions bodies that cooperate and we will be able to draw up a list of human rights abusers who have no place in our society, and who are kept out and cannot spend their ill-gotten gains as they wish through our banks and casinos. Australia obviously should join this movement and there was interest earlier this year in parliament in doing so, and I hope whatever new government comes in will join the movement.

To this end, are there any updates in relation to Australia? I understand Dr Kerryn Phelps and Michael Danby are progressing this?

I spoke to Dr Phelps and I know Michael Danby had introduced it in parliament. I think everything has gone quiet with the [federal] election. But I hope after the election we can talk seriously about it.

How does the Magnitsky Act differ from the principle of universal jurisdiction? Does it supersede universal jurisdiction?

Universal jurisdiction is a legal principle from international law which enables torturers to be arrested wherever they are and extradited to a country that will put them on trial. The Pinochet case is an example. But Magnitsky laws are national laws passed by national parliaments, so there is no question that they are binding, but they use and rely upon definitions that have been developed in international law.

Your London firm, Doughty Street International [set up in 1990] has been working closely with Yazidi torture survivors. Tell us about your work with your colleague, Amal Clooney, and Yazidi torture survivor, Nadia Murad, since she was awarded the 2018 Nobel Peace Prize.

I'm joining Amal in New York next month to launch her TrialWatch Foundation and I know she's been very supportive of the Yazidis, and of course they have been victims of torture and, I think, genocide. Her work there has been outstanding. She's someone who uses her position to help the most downtrodden and does so with a legal ability that is quite extraordinary, which is why I invited her some years ago, before she was married, to join my chambers. The Yazidis have a very powerful supporter in Amal, but she is under great [pressure] – she's a mother with twins, she has many, many demands on her time and she has to ration her support, but she's been a great colleague.

Can you tell us about the TrialWatch Foundation and its purpose?

Yes, it's starting next month [April 2019], when it's being set up by George and Amal [Clooney] to observe trials because so many of them around the world are unfair. The idea is to project skilled observers who will be able to stay and interpret what is happening and spotlight unfairness in legal systems around the world. It was a job that started with Amnesty in the 1970s and 80s. I was an Amnesty observer of trials in South Africa and Vietnam and so on, but the problem is I was unpaid and could only stay a few days – you'd parachute in and parachute out, do your best to understand what was happening. But the idea of the TrialWatch Foundation is to have sufficient funds to enable experienced observers to stay and follow the trials – some go on for years – so you can have a much better appreciation of why they are unfair.

It sounds like a timely initiative. We look forward to hearing a lot more about the work of the foundation in the future. But for now – is the term genocide being used too loosely today? If so, why?

There are several challenges; one is definition. We still have arguments with Turkey, for example, over the Armenian genocide. If ever there was a genocide, it was the killing of one million out of one-and-a-half million Armenians by the Turks in 1915. Even the Pope says it was the first genocide of the 20th century. Popes aren't infallible; it was in fact the second. The first was the killing off of the Herero people in Namibia by the Germans. And of course genocide was committed by

the Nazis, by the Hutus in Rwanda ... we can see that in grainy footage of people of a different race being slaughtered by machetes. But genocide under the Genocide Convention doesn't require the death of most of an ethnic group or even most of an ethnic group; it means an intention to kill because of ethnic or religious hatreds. So we can see or identify genocide with intent in the attitude of Burmese generals to the Rohingya and others. So it can be the subject of misconception, but it can also be used too loosely. Mass murder is sometimes the appropriate term, rather than genocide.

Mass murder where there is no intention to eliminate a race is not genocide. Genocide is related to racial or religious hatred; it does not refer to political hatreds. We need a term such as "politicide" perhaps to deal with that. [For example,] there is Stalin's elimination of the Kulaks. Millions were killed, but that wasn't genocide; it was politicide. Genocide is the worst of all crimes simply because of our historical knowledge that racial and religious hatreds are the most inflammatory and that is why it is the worst of all crimes.

How is it possible today that states such as Saudi Arabia and Russia are going beyond their frontiers to kill citizens and perpetrate human rights abuses beyond their borders with impunity, as in the McKinsey-type contractors? Does this trend concern you?

Yes, of course. They're breaches of international law, gross breaches in the case of both countries, both leaders, and they will continue so long as international law is not enforced and so long as people like Donald Trump turn a blind eye to obvious evidence of implication of the [Saudi] Crown Prince, for example, so long as Western countries sell them weapons, allow their banks, their hospitals, their schools to be open to these killers.

Your dear friend, Justice Michael Kirby, once said of you: "He was always courageous, always ahead of his time." That you saw issues of White Australia, of Aboriginal neglect, the need for engagement with Asia and the rights of women before many people. He described you as "a very good communicator" from the beginning. What will be the focus of your time in the future?

Primarily, TrialWatch and the Magnitsky Act.

Are we any closer to a national bill of rights as put forth in your 2009 book, *The State of Liberty: How Australians Can Take Back Their Rights*?

Yes – a Bill of Rights for Australia. Firming up international law, making it more enforceable and I

think the future may be Magnitsky laws and developing them as a way of punishing human rights abusers and deterring human rights abuse through use of national laws. So that's my future.

What can we expect the theme of your next, and 20th, book to be?

I'm going to write a more philosophical book, perhaps, about who owns the past. It's about my work for the Greek government in getting back the Elgin Marbles, questions that have been raised about return of art stolen from African countries in particular, by colonialist powers. International law is at last moving towards the theory about the return of cultural property, so I want to say something about that: the International Criminal Court has convicted someone for blowing up historic mausoleums in the city of Timbuctou in Mali.

The protection of cultural heritage?

Yes. That's a developing area, of how international law may be able to strengthen it so I think a book on that subject.

We are convening at this conference at a time of regional despair in the wake of the Christchurch terror attack. Hate speech is on the rise.

Yes, I'll probably write something about it. Everyone today at the ceremonies is talking about forgiveness. I don't think a crime of that sort can be forgiven. While

I appreciate the sincerity of people's remarks, I'm starting to worry about the trial. I'm a barrister, a taxi on the rank; I would accept a brief to mitigate, to plead guilty for this man who's obviously guilty, but the problem is how a court system – which is not devised for hate propaganda from the dock – can avoid that within its own traditional rules of fairness. I'm a great advocate of open justice, but I do believe the court system should not allow racial hatred spewed from the dock.

You once said that we can only do what we think is right at the time in relation to human rights atrocities and injustice. You touched on the imperative of hope in your keynote speech at the FASSTT Conference yesterday. Can we afford not to hope today?

People ask me: "Don't you despair?" I don't, because we have come a long way in a short time. International law, criminal law and human rights law did not exist until they were brought into being at the Nuremberg trial, a relatively short time. I remember – I'm getting so old now – in 1973 joining Amnesty and my very first task was to write a letter to General Pinochet, who had started his torture camps, asking him to close them. I'm sure he never read my letter, but 25 years later I acted for Human Rights Watch in a case that resulted in his detention and ultimate discrediting for the crime of torture. So I can say that in my own lifetime we have come a long way, and in a short time, because 25 years is a short time, so I don't despair. R

Street wise

Doughty Street is Europe's largest human rights practice, known for its commitment to pro bono work. It has a passion for defending freedom of speech, the rights of journalists to report in the public interest and a bill of rights in Australia.

The TrialWatch Foundation Courts are increasingly being used as a tool of oppression. In many countries, prosecutors and judges are used to imprison government critics and minorities. In other places, a judge's rulings can be purchased by the highest bidder. Judges can also be complicit in grave human rights abuses when they convict for "crimes" such as homosexuality or blasphemy, or when they ignore due process for defendants. Yet judges and prosecutors are rarely held to account. In some countries courtrooms are closed, and even where trials are open to the public proceedings can be long, convoluted and hard to understand.

In response to these pressing needs, the Clooney Foundation for Justice has developed an initiative focused on monitoring and responding to trials around the world that pose a high risk of human rights violations. As an esteemed US Supreme Court judge once noted: "Sunlight is the best disinfectant." The TrialWatch Foundation will therefore monitor trials in which the law may be used to target a minority or silence a government critic, meaning that there is a greater likelihood of a politicised, unfair trial. The foundation will work to expose injustice and rally support to secure justice for defendants whose rights have been violated.