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International justice body, Canada under the microscope to address ‘credibility gaps’

NEIL MOSS

With the chief prosecutor of the International Criminal Court calling for added emphasis on international justice and perpetrator accountability, a former Liberal justice minister says Canada can help address the body’s budget crisis.

International Criminal Court (ICC) chief prosecutor Karim Khan was in Ottawa for his first official visit May 4-5, where he met with Foreign Affairs Minister Mélanie Joly (Ahuntsic–Cartierville, Que.) and Justice Minister David Lametti (LaSalle–Émard–Verdun, Que.). He also gave the second Elie Wiesel Distinguished Lectureship in Human Rights at the National Gallery of Canada.

During the May 4 lecture, which was hosted by Raoul Wallenberg Centre for Human Rights and University of Ottawa, Khan detailed the “credibility gaps” that international institutions face.

“I think the credibility gap between the touchstone texts of international law and the lived experience of so many, so many survivors, as we speak here today is the challenge for us to jointly ad-

dress,” he said.

Khan said neither he nor the court has earned some of the gratitude that has been bestowed by survivors.

“When you see [survivors in refugee camps] I feel so unworthy,” he said. “They will raise the cry, ‘Welcome, welcome ICC. Welcome, welcome Mr. Khan.’ And what have we done to achieve that hope?” He said when he briefed the United Nations Security Council on the situation in Sudan, he bluntly said the gratitude is undeserved.

“I said, ‘I don’t deserve that gratitude. My office doesn’t deserve that gratitude. The International Criminal Court does not deserve that gratitude. And you, members of the Security Council, do not deserve that gratitude,’” Khan said.

He said the world’s actions show that “we don’t care enough.”

Khan said the ICC has not been “believed.”

“We’d been viewed as a body pontificating too much, espousing important fine ideals, but so divorced in time and space

International Criminal Court chief prosecutor Karim Khan held meetings with Foreign Affairs Minister Mélanie Joly and Justice Minister David Lametti during his first official visit to Canada May 4-5. The Hill Times photograph by Sam Garcia

from the horrors that are visited upon people that we’re not seen to be relevant in the way we should,” he said, but noted that is changing as the ICC is on the frontlines in Ukraine, Libya, and other parts of the world.

Despite a gloomy appraisal of the current state of international justice, Khan said he does have hope there might be change.

“I do have reason to believe that finally we may, at least there is an opportunity for us, to finally come of age as a species,” he said, citing the 43 nations that referred the situation in Ukraine to the court after he called for countries to do so.

“One-third of all state parties have found common voice to say what is happening in Ukraine is a real concern, and we demand and require independent and impartial investigations to get to the

truth,” he said.

Canada has donated more than \$1-million as part of the court’s trust fund to target initiatives, including to investigate conflict-related sexual violence, and provided seven RCMP officers to the ICC.

Budgetary constraints were on Khan’s mind during his visit to Ottawa.

As part of his meetings with Joly and Lametti, Khan had two specific budgetary requests for Canada, according to past Liberal justice minister Allan Rock, who was by Khan’s side during the meetings, as was fellow former justice minister Irwin Cotler.

The requests were for funds to increase diversity of employees at the ICC, as well as to boost the capacity of countries around the world to conduct investigations of their own.

“He wants to build up the capacity of countries, so they can do their own prosecutions. So, we end up with accountability and an end to impunity,” Rock said.

During his lecture, Khan said his office’s budget of around 60-million euros is insufficient.

“What we’re asking for is peanuts,” he said, remarking that the ICC’s budget pales in comparison to the “\$2-trillion spent on weapons or even the \$250-billion spent on the World Cup.”

Rock said Canada could play a helpful leadership role as Canadian Ambassador to the UN Bob Rae is vice-president of the assembly of state parties for the ICC.

He added that Canada has a role among

ICC parties as a leader not just by example, but also through advocacy.

He said the difference is “night and day” between the money devoted to militaries and weapons compared to the ICC and international justice.

“If you want a more peaceful world, perhaps the money’s better spent on strengthening the court than buying another cruise missile,” he said.

During his Ottawa visit, Khan appeared before the House of Commons Committee on Foreign Affairs where he was questioned about the ICC’s arrest warrant for Russian President Vladimir Putin. Putin’s potential visit to ICC-member South Africa for an August BRICS summit has some hoping that Putin will be arrested. South Africa has flip-flopped over whether it will enforce the warrant, even suggesting it could leave the ICC.

In 2015, South Africa refused to uphold an ICC arrest warrant against Omar al-Bashir when the then-Sudanese president was in South Africa for an African Union meeting.

During a May 5 press conference on Parliament Hill, Khan told reporters that he has “every confidence” that South Africa would uphold the warrant.

“South Africa, God willing, will as an exercise of sovereign will—out of the values that it holds dear, pursuant to its constitution that is fantastically drafted in the shadow of apartheid—they will decide that they own the law and they want to act on the law for their own people and the world they want to bequeath to their children as well,” he said.

Rock, who joined Khan during his com-

mittee appearance and at the press conference, said the execution of the warrant will reflect on the court’s credibility.

“The court will be criticized if nothing happens,” he told The Hill Times, remarking that when alBashir travelled to South Africa and was not arrested, the ICC looked “impotent” and “irrelevant.”

“It looked like it was incapable of achieving its very purpose,” he said.

Rock wouldn’t say whether the arrest warrant for Putin was brought it up in Khan’s meetings with Joly and Lametti, but said: “You can assume that everybody is keenly aware of that high-profile event and very concerned about what might happen in the months ahead.”

University of Ottawa professor John Packer, director of the Human Rights Research and Education Centre, said having South Africa acting on the warrant would be “very important” for the credibility of the ICC.

The University of Ottawa’s Human Rights Research and Education Centre co-hosted Khan’s talk in Ottawa.

“The fundamental shortcoming of not only of this court, but of most international institutions is that they lack teeth or ... enforcement capacities,” Packer said.

Echoing Rock, Packer said the decision not to execute the warrant against al-Bashir was a “blow” to international justice.

He noted that given the conversations being had around whether South Africa will uphold the warrant, it is a sign that it already has had an impact.

If Putin is present in South Africa, but is not arrested, it will be a “blow” to the ICC, said Packer.

“That doesn’t mean the end all and be all of the matter, but it will be a blow,” he said.

While Khan applauded Canada’s contribution to the ICC, Packer said Ottawa’s efforts are still “pretty darn small.”

“[Canada] could do a lot more. It’s pretty modest if you put it up against the challenges at the global level,” he said.

Packer said there is also more Canada should be doing under its own obligations, including under the Genocide Convention. The Liberal government has consistently stressed it is up to international tribunals, like the ICC, to declare something a genocide.

“We do not need to wait for a judicial determination—that is absolutely wrong,” he said, noting that Canada’s obligation under the convention requires Ottawa to prevent genocide from taking place.

International criminal justice expert Mark Kersten, a University of the Fraser Valley professor, said Canada should be leading an effort to amend the Rome Statute, which governs the ICC, to hold countries accountable that breach the law of aggression even if they are not a state party of the court.

He said that Canada is one of the countries that is undermining the ICC’s agreement on prosecuting the crime of aggression by only applying it to state parties.

“So Russia is not a member state of the ICC, ergo the ICC can’t investigate this

crime that really starts all the other crimes,” he said. “What can Canada do to help the ICC? It can do a complete about-face and actually support changing the Rome Statute ... to help ensure it can investigate crimes of aggression.”

Kersten added that Canada can do more to hold perpetrators of international justice to account when they are within Canadian borders, remarking that Canada treats cases of foreign nationals who have allegedly committed war crimes as immigration matters and deports them to the country where they have allegedly committed their crimes.

During his speech in Ottawa, Khan said it shouldn’t matter what body prosecutes perpetrators, whether it is the ICC or a country like Canada.

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Figure:

Former justice minister Allan Rock, pictured left with ICC chief prosecutor Karim Khan, says the court faces a question of credibility over South Africa’s potential execution of an arrest warrant for Russian President Vladimir Putin. The Hill Times photograph by Sam Garcia

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Former Liberal justice minister Irwin Cotler joined ICC prosecutor Karim Khan during his Ottawa visit. The Hill Times photograph by Sam Garcia

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