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Genocide, War Crimes, Crimes Against Humanity

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Mary Robinson

Abstract

This article examines such violations of international human rights as genocide, war crimes, and crimes against humanity. In Part I, the author explores the nature and uniqueness of these crimes. In Part II, the author suggests possible courses of action the international community can take and improvements that can be made in response. Finally, Part III analyzes methods of preventing such crimes from occurring.

INTRODUCTION

GENOCIDE, WAR CRIMES, CRIMES AGAINST HUMANITY

*Mary Robinson**

INTRODUCTION

Ladies and Gentlemen, I am pleased to be back at Fordham University and to renew contact with many friends here. I would mention in particular Fr. Joseph O'Hare, the President of Fordham University, who has been so welcoming to me in the past. I have particularly warm memories of my visit to Fordham in 1995 as President of Ireland when I was the proud recipient of an honorary degree. I would also make special mention of John Feerick, the Dean of Fordham University School of Law.

I would like to pay tribute to the *Fordham International Law Journal*. It is a highly regarded journal, which makes a very valuable contribution to the analysis of important legal issues of the day. In the continuing struggle to establish a culture of respect for human rights, the contribution of the academic community through the publication of learned journals such as the *International Law Journal* cannot be overstated.

You will not be surprised if I single out the *Journal's* coverage of Irish affairs, as its record in this field is exceptionally strong. There have been numerous contributions to the *Journal* over the years on questions relating to Northern Ireland, culminating in the dedication this year of the full text of one of the *Journal's* publications to the Northern Ireland Peace Agreement. This book was a commendable initiative. The list of contributors reads like a Who's Who of key figures in the search for peace in Northern Ireland.

I know, too, of Senator George Mitchell's close connections with Fordham University. I am happy to put on record that everyone in Ireland owes a debt to Senator Mitchell for his courage

* Address by Mary Robinson, U.N. High Commissioner for Human Rights, on November 4, 1999, at Fordham University School of Law.

and perseverance in the interests of peace. We wish him every success in his vital work.

My presence here tonight is linked to another *Fordham International Law Journal* book, which takes as its theme *Genocide, War Crimes, and Crimes Against Humanity*. The book of Essays on this theme has drawn on the experience of scholars and diplomats and I hope that it will provide a valuable source of material for students and the public alike. It is dedicated to the work of the United Nations in the field of human rights, which strikes me as appropriate since it recognizes the efforts put in by so many people over the years and is also an encouragement to all of us working in the area to renew our efforts.

This area is a fitting subject for me to address as many aspects of international criminal law and justice relate directly to established norms of human rights law. The mandate of my Office is to coordinate human rights protection and promotion throughout the U.N. system. What I would like to do today is to focus on the human rights dimension of these crimes and, in particular, what may be done to bring about better deterrence and prevention in the future.

I. *GENOCIDE, WAR CRIMES, CRIMES AGAINST HUMANITY*

Genocide, war crimes, and crimes against humanity all involve massive violations of international human rights and humanitarian law. Genocide is the most serious of all human rights violations in that it involves the attempted or actual destruction of an entire national, racial, ethnic, or religious group, by either killing or causing serious bodily or mental harm to members of the group. Genocide also includes deliberately imposing living conditions calculated to bring about the group's physical destruction. The word "genocide" is of recent coinage, having been first used only after World War II. The immediate acceptance of the new word reflected the world's realization that Hitler's Final Solution represented an especially terrible crime. The ferocious relentlessness with which the Holocaust was carried out still has the power to shock us to the core today, more than fifty years after the event.

I stress the unique seriousness of the crime of genocide because the word can be debased and it is important that we have it clear in our minds so that we can recognize it when it occurs.

The special character of genocide was the moving force behind the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide¹ ("Genocide Convention"). The Genocide Convention was drafted in the immediate aftermath of the Holocaust; the mood of that time was "Never Again" and the Genocide Convention was an attempt to ensure this. As we know, that is not what has happened. The Holocaust was not the first genocide in human history and, regrettably, neither was it the last.

Crimes against humanity and war crimes are commonplace in the modern world. For evidence of this I would refer you to the report recently submitted by the U.N. Secretary General to the Security Council on Civilians in Armed Conflict ("Report"). The Report paints a grim picture of inhumanity on a massive scale. Over this past year alone in Kosovo, Sierra Leone, and East Timor, thousands of civilians have been maimed, raped, murdered, and driven from their homes, almost as a matter of routine. It is clear that there is widespread, open repudiation of the most basic principles of human rights and humanitarian law.

What is to be done in the face of such outrages? I would like to suggest a number of areas where I believe that action can be taken.

II. POSSIBLE COURSES OF ACTION AND AREAS TO IMPROVE

A. *Accountability*

The first concerns accountability. I welcome the fact that national judicial authorities are increasingly taking the position that grave human rights violations must be accounted for, irrespective of the amount of time that may have elapsed or the standing of the individual concerned.

Where domestic law and order has broken down, individuals may feel that they can commit even the most atrocious crimes without fear of legal sanction. When this happens, there is an urgent need to re-establish the principle of individual responsibility for crimes. If serious human rights violations are not addressed and a climate of impunity is permitted to continue, then the effect will be to stoke the fires of long term social conflict.

1. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

Where a community splits along religious or ethnic lines, such conflict can vent itself through cycles of vengeance over decades, and even centuries.

The Genocide Convention envisaged the setting up of an international court, but forty-five years passed before the international community took the first steps in that direction. It was only in the past decade that the international community set up *ad hoc* tribunals in two places where egregious human rights violations took place—Rwanda² and the former Yugoslavia.³ These tribunals were the first international mechanisms of their kind to have been established since the post-war international military tribunals of Nuremberg⁴ and Tokyo.⁵ They are doing valuable work but, like the earlier tribunals, they are essentially retrospective in character, having been set up after the situation has already reached disastrous proportions and after gross human rights violations has been committed on a large scale.

Given their territorial, temporal and material jurisdictional limitations, *ad hoc* tribunals can exert only a limited deterrent effect. A major advance was made with the adoption of the Rome Statute of the International Criminal Court⁶ (“Rome Statute”) on July 17, 1998, a step that should lay the foundations of a global system of international criminal law.

The idea behind the Rome Statute is to establish a standing International Criminal Court (or “Court”) capable of acting on a complementary basis to the domestic organs of a State party where the State may be unwilling or unable to prosecute crimes under international law. The Court’s competence is intended to

2. *Statute for the International Criminal Tribunal for Rwanda*, S.C. Res 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).

3. *Statute for the International Criminal Tribunal for the Former Yugoslavia*, S.C. Res 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

4. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280 (entered into force Aug. 8, 1945), annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 279.

5. Charter of the International Military Tribunal for the Far East, Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, Jan. 19, 1946, T.I.A.S. No. 1589, reprinted in 4 TREATIES AND OTHER INT’L AGREEMENTS OF THE UNITED STATES OF AMERICA 27 (1946).

6. UNITED NATIONS, DIPLOMATIC CONFERENCE OF Plenipotentiaries on the Establishment of an Int’l Criminal Court, Rome Statute of the International Criminal Court, U.N. Doc. A/Conf.183/9 (1998) (adopted by United Nations on July 17, 1998)

cover the most serious violations of human dignity, whether they occurred during or outside armed conflict and irrespective of by whom.

The Rome Statute contains many far-sighted elements, including a general provision that ensures that the application of any and all legal norms by the Court conforms fully with established international human rights law. The Court's jurisdiction covers situations of non-international armed conflict, thereby broadening its relevance to reflect the reality that many of today's armed conflicts happen within, rather than between, States. And I am pleased that provisions that my Office had suggested are reflected in the Rome Statute, including, for example, the special provisions concerning rape, sexual assault, and gender-related crimes, as well as the mandatory provision upon the Prosecutor to appoint advisers with legal expertise on sexual and gender violence and violence against children.

The Rome Statute cannot enter into force until it has been ratified by sixty States. I strongly urge States to sign and ratify this statute and, where necessary, to implement relevant domestic law so that the International Criminal Court can soon become a reality.

B. *Breaking the Cycle of Impunity*

Ratification of the Rome Statute will be a challenging test of the international community's resolve to put the legal mechanisms on a sound basis. At the same time, we must remain open to the possibilities of different ways of securing justice and accountability, bearing in mind the harsh reality of many political and post-conflict situations. The magnitude of the problems facing countries in post-conflict situations can be so great that the normal processes of justice are simply not feasible. I think, for example, of the present situation in Sierra Leone. The people of Sierra Leone have experienced atrocities on a scale and of a brutality that are scarcely imaginable. The campaign of terror has been purposely aimed at the civilian population. The number of deaths neither will be known, nor will the number of those deliberately maimed and raped. And the people of Sierra Leone have had to endure the further indignity that the outside world has shown little interest in their awful plight.

The amnesty provision contained in the Lome Peace Agree-

ment of July 7 was not something that the United Nations favored and a reservation was entered when the agreement was signed, pointing out that there could be no amnesty for the grossest crimes amounting to crimes against humanity. When I visited Sierra Leone last June I called for the establishment of a Commission of Inquiry to investigate the massive human rights violations that have taken place. My Office has maintained contacts at a number of levels with the Sierra Leone authorities to seek ways of ensuring that there is accountability for the atrocities that took place. In particular, I have sent consultants to assist in the establishment of a Truth and Reconciliation Commission. I have also sent my adviser on national human rights institutions to explain the principles that make such bodies effective.

Because the issues raised in Sierra Leone are so important, I have commissioned a distinguished African jurist to carry out an examination of the nexus between a Commission of Inquiry and a Truth and Reconciliation Commission. I believe this study may have a broader relevance in addressing conflicts in Africa.

Rwanda is another country trying to come to terms with a very bloody past, the genocide of 1994. Five years on, the problems regarding the administration of justice and gross overcrowding of jails remain acute. Of even more long term importance, both for the country and the region, is the task of reestablishing a culture of human rights. My Office has been supportive of the establishment of a National Human Rights Commission and we participated in a useful workshop last month in Kigali. Special Representative Michel Moussali, in his current report to General Assembly, draws attention to an idea raised by the Rwandan Government of resorting to a system of participatory justice, incorporating the ancient traditional system of justice known as *Gacaca*, to bring to light the full truth about the heinous crimes committed in Rwanda and to administer justice to those responsible. The Special Representative felt that the government's initiative was an interesting approach and worth pursuing and a number of donors, including the United States, are supportive. If this initiative respects human rights norms and is effective in addressing the problem of Rwanda's huge prison population—currently numbering some 130,000—then it is worth close examination.

What these approaches have in common is the search for effective ways of breaking the cycle of impunity. Facing up to

the reality of what has happened and rendering justice to the perpetrators are vital components in the process whereby societies can come to terms with crimes of this magnitude and move on. But the overriding message should be clear: nobody who commits genocide, war crimes, or crimes against humanity should think that they will get away with it. That is true whether the crimes are committed in Cambodia, in the former Yugoslavia, in Chile, or in any part of the world. And it is true of East Timor where the International Commission of Inquiry called for by the Commission on Human Rights has been formed and has begun its work.

C. *Observe the Geneva Conventions*

There is a substantial body of international humanitarian law, the core of which is the four Geneva Conventions adopted in 1949 and whose fiftieth anniversary we mark this year. In practice, humanitarian laws are widely ignored or willfully disrespected both by State and non-State actors. More and more, civilians are becoming not just casualties of conflict but weapons of war, in flagrant violation of humanitarian law. Especially vulnerable are women, children, the elderly, refugees, and displaced persons whose plight is often compounded by loss of the vital necessities for survival such as security, shelter, medical care, and access to food and water.

Although they are often breached, the provisions of the Geneva Conventions and the principles on which they are based remain as valid today as they were fifty years ago. But, faced with the levels of cynicism that prevail in modern warfare, new ways will have to be found to ensure that those caught up in conflicts are guaranteed at least their basic rights and dignity. That is far from being the case at present. We need to foster cooperation to this end between individuals, governments, and peoples, to rally behind the conventions and their central message—that even in conflicts there must be respect for human dignity, compassion for those who suffer, and solidarity between all people.

D. *Keep Children Out of War*

A very practical measure that could be taken would be to respond to the growing international movement to end the use of child soldiers. We have seen in many recent conflicts that

even these most vulnerable members of society are not immune from the human rights impacts of such conflicts. Momentum is building on this issue in light of the clear evidence that unscrupulous adults will not hesitate to use children in conflicts for their own ends. I strongly support the raising of the age limit for recruitment of children into armed forces from fifteen to eighteen and I call upon governments—including the United States—to adopt the Optional Protocol to the Convention on the Rights of the Child,⁷ which would raise the age limit to 18. This year marks the tenth anniversary of the Convention on the Rights of the Child and the adoption of the Optional Protocol would be a clear signal that we are taking the rights of children seriously.

III. PREVENTION

More attention should be paid and resources devoted to preventive strategies to head off gross human rights violations before they occur. Last week I attended a conference in Washington, D.C. on the subject of Atrocities: Prevention and Response. I welcomed the holding of the conference and urged that the international community start to take prevention seriously. A lot of research has been done and much has been written about the value of prevention but still there is a strong tendency to wait until a situation has become so inflamed that open conflict breaks out. From the point of view of cost alone, it makes a lot more sense to spend money in time on prevention rather than to carry the burden of reconstruction after a conflict. From the point of view of the victims of conflict, actions taken after the situation have blazed out of control, frequently coming too late to save them.

Two examples where failure to take preventive action resulted in atrocities are the Great Lakes region of Africa and the former Yugoslavia. The situation in the Great Lakes region is dangerously unstable. Fighting continues in the Democratic Republic of Congo and Burundi. Over the past three months

7. Report of the Open-Ended Working Group on a Draft Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children of Children in Armed Conflicts, U.N. ESCOR, Commission on Human Rights, 51st Sess., Agenda Item 24, U.N. Doc. E/CN.4/1995/96 (1995), cited in Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 *BROOK. J. INT'L L.* 679, 700 n.58 (1996).

alone, hundreds have been killed. The risk of the conflict growing even wider is clear—yet the attention of the international community is sporadic at best, often only becoming active after human rights violations have reached a particularly high level. Responding to individual flare-ups in the fighting without taking account of the long term needs of the region is not the answer.

In the former Yugoslavia, too, the approach has all along been reactive rather than proactive. Nobody could fail to have been aware over the past decade that the human rights situation in Kosovo was deteriorating. The political will, however, was lacking to act before the crisis stage was reached. The result was conflict management instead of conflict prevention—at an appalling cost in human lives and material damage. Even today the situation there is very bad. Three months after the fighting in Kosovo ended, there are still attacks on the Serb and Roma population, houses are burned down or taken over by force, and people are driven out and killed.

There is an urgent need to step up the level of preventive actions. There must be an end to the pattern where intervention by armed forces stops atrocities only after the fact and then the donor governments are expected to contribute billions of dollars to rebuild shattered societies.

The United Nations has a special role to play in prevention—but it can only do so if it has sufficient resources. My Office is a good example. We are steadily increasing the amount of work we do in building the capacity of countries to strengthen human rights. One area where we can give valuable assistance is the setting up of national human rights institutions. We have been asked for assistance by over forty countries, and we assist them as best we can. But lack of resources is a constant problem. My Office, and the United Nations as a whole, can only do what the nations of the world want it to do and can only be effective if there is adequate funding.

A. *Addressing the Root Causes*

International criminal law to deter genocide, war crimes, and crimes against humanity, and the mechanisms to implement it, will only be effective if accompanied by measures to deliver all human rights to all people. That includes the range of economic, social, and cultural rights and the right to development.

These rights have attracted less attention than civil and political rights but they are no less important and the linkage with gross human rights violations is inescapable. The President of the International Committee of the Red Cross, Cornelius Sommaruga, recognized this in a piece he wrote recently on the occasion of the fiftieth anniversary of the 1949 Geneva Conventions. He said:

It is more crucial than ever that we reflect on the humanitarian principles that alleviate the suffering of the vulnerable, the weak, the defenceless[sic]. Poverty, like social injustice and massive human rights abuses, is one of the causes of armed conflict. In the limbo of contemporary history are any number of regions with hardly any economy—except the arms market.

It is only too evident that the fundamental right to decent living conditions, food, basic healthcare, and education—all laid down in the International Covenant on Economic, Social and Cultural Rights—are not enjoyed by millions. The problems of marginalization, of extreme poverty, of economic and social imbalances within and between societies are getting worse. The World Bank estimates that 1.3 billion people live on less than US\$2 a day. The United Nations' Children's Fund ("UNICEF") reports that nearly a billion people, or one sixth of humanity, are functionally illiterate and will enter the twenty-first century unable to read a book or sign their name.

We cannot expect democracy and human rights to flourish if access to these basic rights is denied. Greater efforts need to be made to combat poverty and to bring the benefits of modern technological development to all the peoples of the world. It is my firm belief that implementing economic, social, and cultural rights is an essential component in the building of a stable international order.

B. Looking Ahead

In spite of the scale of gross human rights violations that disfigure the world and the poor record of the international community in learning lessons from past mistakes, I refuse to be pessimistic about the future. I believe that the central importance of human rights is now more fully understood. The norms covering most of the areas of potential violation are already on

the statute books, and the mechanisms are gradually coming into place. We are moving from the era of standard setting to implementation. What is required now is the will to take the necessary next steps with the emphasis squarely on preventive strategies.

I would like to thank the *Fordham International Law Journal* again for the initiative of devoting a special issue of the *Journal* to this extremely important topic. I hope that it will not only encourage debate, but also further shape our response to the crimes that constitute the worst manifestations of human behaviour. The goal we share is a noble one: to put universal human rights into practice and to ensure that the rights of all the people of the planet are protected.