

Fordham International Law Journal

Volume 23, Issue 2

1999

Article 6

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Abstract

Major undertakings are necessary to translate international human rights from paper to reality. The International Criminal Court is a momentous step towards ratifying the near-universal standards regarding basic human rights during wartime, but the Court—reactive as it is—will not alone suffice. Proactive conflict prevention, through financial assistance and political pressure, is necessary to truly protect civilians from the impact of war. Still, some people may remain in danger. In these cases, the widespread negative impact of serious government human-rights violations, such as genocide, militates against non-intervention.

INTERNATIONAL HUMAN RIGHTS AND STANDARDS

*Jeremy Greenstock**

As we approach the new millennium, there is greater international consensus than ever before on the standards that should govern behavior both in peace and in war. The foundations were laid fifty years ago, in the aftermath of the horrors of the Second World War. For the first time in history, nations came together to set out, in the 1948 Universal Declaration of Human Rights,¹ the rights of all people everywhere. In the 1949 Geneva Conventions, they set down rules to protect non-combatants from the devastating effects of armed conflict.

A substantial body of international human rights and humanitarian law has been built on those foundations. Increasingly, states have signed up to the key covenants and conventions and embodied their principles in their domestic law. There is a complex human rights machinery, including the United Nations Commission on Human Rights that has focused world attention on violations and put international pressure on states to improve their protection of human rights.

We are still some way from universal ratification of the human rights and humanitarian law instruments. But the work of standard-setting through the great international instruments has essentially been accomplished. The acid test now is practical implementation: making the standards count at the grass roots level.

What are the images that haunt us in 1999? Mass graves in Kosovo; militias rampaging through East Timor; traumatized and mutilated children in Sierra Leone; eerily unrecorded starvation and distress in Angola and The Horn. They starkly illustrate the huge gap that still exists between the international norms and reality.

That gap is in part a reflection of the complex and changing nature of conflict in the modern world. Today's wars are most frequently conflicts within, not between, states. In internal

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1. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., 67th plen. mtg., U.N. Doc. A/810 (1948).

conflicts, it is typically civilians who bear the brunt of suffering. Increasingly, they are deliberately targeted by the combatants and subjected to the most appalling human rights violations. In the 1990s, civilians made up an estimated eighty percent of those killed, hurt, and disabled in fighting.

In these often anarchic conflicts, many of the perpetrators that attack civilians are not under the control of a state or part of a chain of command. The fundamental and disturbing problem is the collapse of the rule of law, both international and internal. And some of the most intractable security crises are generated by single-minded and brutal leaders who are only interested in their own grip on power and do not give a damn about international standards.

To what extent should we care? With the end of the Cold War era, we take world peace, in the sense of no world war, for granted. There is no longer the fear that every conflict that flares up risks setting off a superpower conflagration. It is not so easy to explain why our direct national interest is involved in distant conflicts. Disaster for us, and the majority of those with whom we interact, is not imminent.

But deeper analysis shows that national interests are at stake. Globalization is transforming the world, binding us more closely together in trade, investment, travel, and communication. What happens in one country can have a direct impact on the prosperity and security of countries on the other side of the world.

The consequences of conflict affect us all: for example, in Britain, ninety percent of the heroin on the streets of our major cities is grown in Afghanistan, under the cover of the generation-long conflict there. Across the countries of Europe, there are now several hundred thousand citizens of the former Yugoslavia who have fled to seek sanctuary from repeated conflicts there.

When governments commit crimes against their people, or are unable to prevent some of their people committing atrocities against others, stability and development are early casualties. That has a knock-on effect on trade and investment, which particularly affects export-dependent countries such as Britain.

There is also a moral dimension. People in the United States, Britain and elsewhere are increasingly unwilling to ignore the suffering of people in other parts of the world. Few people

would turn their backs if their neighbors were beating their children. In the same way, few people aware of world events now consider it none of their business when a government inflicts atrocities on its own people. There is a strong sense that we cannot turn our backs on massive violations of humanitarian and human rights norms anywhere in the world if we maintain that the values we espouse are universal.

So we must care. But that leads to a more difficult question: if we care, how should we respond? What action can we take to stop the ethnic cleansing, systematic rape and mass murder that have been the tragic features of modern conflict?

First, we have to end impunity for the perpetrators. Sovereignty has in the past provided a cloak behind which states have been able to protect individuals from being held accountable, even when they have been guilty of the most appalling atrocities. But with the establishment of the International Criminal Tribunals for Rwanda² and the former Yugoslavia,³ the international community has extended its writ to tackle the anomaly by which prosecution is more likely for the killer of one person than for the killer of thousands.

The Tribunals have succeeded in calling high-ranking individuals to account for their actions. The sentence by the Rwanda Tribunal of Jean Kambanda to life in prison, after he pleaded guilty to six counts of genocide and crimes against humanity, marked the first time an individual, let alone a former Head of Government, had been punished for the crime of genocide.

But the Tribunals are limited geographically. We need a system with global reach. The adoption last year of the landmark Rome Statute ("Statute")⁴ establishing a permanent International Criminal Court ("Court")⁵ is now in prospect of

2. Statute for the International Criminal Tribunal for Rwanda, S.C. Res 995, 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. 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).

5. The International Criminal Court is an international court established to prosecute crimes such as genocide. *United Nations Conference of Plenipotentiaries on the Establishment of an Int'l Criminal Court*, (visited Dec. 4, 1999) <<http://www.un.org/icc>> (on file with the *Fordham International Law Journal*).

this goal. As U.N. Secretary General Kofi Annan has said, the Statute represents “a giant step towards universalizing the fight against impunity to include every country, every leader and every militia guilty of crimes against our common humanity.”

The Court gives expression to the determination of the international community that genocide, crimes against humanity and war crimes should not go unchecked. In effect, we have put war criminals on notice that they will be answerable for their crimes. If that makes only some future dictators think twice before launching atrocities, then that in itself is worthwhile.

The Court will also empower victims with the knowledge that, however powerful their oppressors are, justice is possible. That will have an important part to play in reconciliation and in helping victims and their families come to terms with the horror of their suffering.

The Court’s impact will depend on the breadth of international support it can command. Eighty-nine states have already signed the Statute. Many are enacting the legislation they require for ratification. The United Kingdom shares the widespread wish that the United States should sign the Statute. A Court with U.S. backing will be much stronger than one without it. We recognize the concern that U.S. servicemen operating overseas could be subject to unjustified, politically motivated accusations. But we, and other North Atlantic Treaty Organization (“NATO”) allies, do not believe this will be the case. There are sufficient safeguards in the Statute to protect servicemen.

The most important such safeguard is the complementarity principle, which allows domestic jurisdictions the right to try their own nationals. If there were serious allegations made about British citizens in good faith, then we are confident we could demonstrate that there is a remedy in British justice. The same would apply in the United States. We have encouraged our U.S. colleagues to support the Court. We hope that a way can be found to meet U.S. concerns while preserving the integrity of the Statute.

But while the Court will exist as a warning, that in itself will not be sufficient. If we are really to protect civilians from the impact of war, then we need far-reaching strategies for preventing violent conflict from starting in the first place.

Those strategies must address the underlying causes of con-

flict. Modern conflicts are rarely ideological: their roots go deeper. There are a range of factors that make the descent into violence more likely. As the treatment of the ethnic Albanian community in Kosovo has shown, where a particular group is discriminated against over a long period, denied a political voice or mistreated, conflict may follow. Poverty, too, increases the risks of violent conflict, especially where some sections of society are marginalized and denied access to even basic services. Undisciplined, unaccountable security forces are more likely to be violent and abusive. Easy access to weapons obviously makes violence more likely.

We need to tackle each of these strands: strengthening our support for equitable development and good governance; helping vulnerable states develop responsible and well-trained security forces; curbing illicit trafficking in weapons, including small arms that have become the main cause of civilian deaths in modern welfare.

None of this is easy, quick or cheap. But given the enormous human and financial costs of conflict, it must be attempted. We need to recognize the vital importance of conflict prevention and post-conflict peace-building in breaking the cycle of violence, and to invest more heavily in it.

But even if we take prevention more seriously, it will not always succeed. As the U.N. Secretary General's 1999 Report on the work of the United Nations states: "[p]reventive philosophy is predicated on the assumption of good faith, the belief that Governments will seek to place the welfare of their people as a whole over narrow sectional interests. Sadly, we know that this is often not the case."⁶

If, despite all the assistance and political pressure the international community can bring to bear, large numbers of people remain in danger of being killed, maimed or driven from their homes, then should we give up and stand aside? Or should we be ready in the last resort to engage militarily to impose international standards and values?

Non-intervention is an important principle of international order, acting as a deterrent against the imposition of a political system or political values on countries that may not want them.

6. *Report of the Secretary-General on the Work of the Organization*, U.N. GAOR 54th Sess., Supp. No. 1, at 6, U.N. Doc. A/54/1 (1999).

But acts of genocide cannot be an internal matter. As the British Foreign Secretary told the U.N. General Assembly in September 1999: "the first responsibility for reconciling internal conflict rests with the state in which that conflict arises. But we have a shared responsibility to act when confronted with genocide, the mass displacement of peoples or major breaches of international humanitarian law."

This year, the events in Kosovo and more recently East Timor have led to a great deal of soul-searching around the world on the case for humanitarian intervention and its relations to the principles of national sovereignty.

I sense a general trend of international support for greater activism by the United Nations when humanitarian catastrophes threaten. But there is an important debate to be had on the circumstances in which military action is the right course, and the conditions under which such action should be taken.

I believe that that debate, which is crucial to the Security Council's role in the maintenance of international peace and security, needs to be pursued as a matter of urgency. If we can build consensus—in the Security Council and more widely—around a pragmatic set of principles and conditions, then it is more likely that the Security Council will be able to unite, and unite quickly, in responding to the challenges it faces.

The bones of a new international approach to gross violations of human rights and international humanitarian law are beginning to emerge: the establishment of a strong and effective International Criminal Court acting as a deterrent and bringing those who perpetrate atrocities to justice; a shift from a culture of reaction to one of prevention; the building of a satisfactory international consensus on intervention across borders in humanitarian emergencies. All of these goals are major tasks. But they are all crucial if the new millennium is to see international human rights and humanitarian law translated from paper to reality. We must roll up our sleeves and get down to it now.