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The Russian Approach: The Fight Against Genocide, War Crimes, and Crimes Against Humanity

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Abstract

Despite some ambiguous periods in Russia's history, its record in affirming the foundations of humanism in international relations is unquestionable. The new democratic Russia, which is faithful to traditions of humanism and mercy, is making strong efforts to defend victims of genocide, war crimes, and crimes against humanity. The experience of the international community in combating genocide, war crimes, and crimes against humanity indicates that the fight against these evils is bound with efforts to support international peace and security. Post-World War II history indicates that it is the United Nations that is the central figure in the struggle for peace and reinforcement of human dignity. The U.N. Charter provides great possibilities for improvement of international cooperation in fighting genocide, war crimes, and crimes against humanity. Entering the new millennium, the international community should efficiently use those possibilities while adhering to the solid basis of the U.N. Charter and international law in general. The first section of this article examines international codification of genocide, war crimes, and crimes against humanity. The second section of this article examines modern developments in the fight against genocide, war crimes, and crimes against humanity. The third section of this article focuses on preventing these crimes. The fourth section of this article focuses on humanitarian intervention. The fifth section of this article discusses punishing for genocide, war crimes, and crimes against humanity.

THE RUSSIAN APPROACH: THE FIGHT AGAINST GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY

*Sergey Lavrov**

INTRODUCTION

Despite some ambiguous periods in Russia's history, its record in affirming the foundations of humanism in international relations is unquestionable. As early as 1776, the Russian Grand General Alexander V. Suvorov issued an order stating that "prisoners should be treated in a humane way, barbarity is a disgrace."¹ Russia played an instrumental role in the codification of the laws and customs of war, and in the formation of the concept of crimes against humanity, when it was an initiator of the First Hague Peace Conference in 1899 and the Second Hague Peace Conference in 1907. The preamble of the Fourth Hague Convention in 1907 carries a famous clause by the Russian lawyer Fyodor Martens known as the "Martens Clause," which contains a reference to "the laws of humanity."² Russia also made a decisive contribution to the destruction of the Nazi system of human hatred and, in the post-World War II period, to the establishment of a mechanism to bring war criminals to trial. This mechanism was the affirmation of a legal basis to fight genocide.

The new democratic Russia, which is faithful to traditions of humanism and mercy, is making strong efforts to defend victims of genocide, war crimes, and crimes against humanity. Two examples of Russia's efforts are its humanitarian initiative in 1993, and the Russian Federation's former President Boris Yeltsin's initiative to hold a Third Peace Conference. The results of Yeltsin's initiative were summarized at the fifty-fourth United Nations General Assembly in 1999.

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1. Peter Ford, *Can War Be Fair?*, CHRISTIAN SCI. MONITOR, Aug. 11, 1999, available in 1999 WL 5381473.

2. Hague Convention Concerning the Law and Customs of War on Land, pmbl., Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 279.

I. *INTERNATIONAL CODIFICATION OF GENOCIDE, WAR
CRIMES, AND CRIMES AGAINST HUMANITY*

The origin of genocide, war crimes, and crimes against humanity in international law is inseparably linked with the international community's efforts to outlaw infringements on peace, as well as with the affirmation of personal criminal responsibility for such acts. This link was most clearly fixed in the Statute of the International Tribunal in Nuremberg³ ("Nuremberg Charter"), and then in the Convention on the Prevention and Punishment of the Crime of Genocide⁴ ("Genocide Convention"). Initial efforts to render it a crime to infringe upon the laws and customs of war, however, occurred before the existence of the Nuremberg Charter and the Genocide Convention. In the second half of the nineteenth century, it became

commonly accepted that there are criminal acts, or criminal inaction, for which the international law rests the criminal responsibility upon the guilty, in which case the penalty may be pronounced either by international judicial institutions charged with corresponding powers for that purpose or by courts and military tribunals of one or another state.⁵

The Treaty of Versailles ("Treaty"), which summarized the results of World War I, foresaw the creation of a tribunal to bring the former Emperor of Germany to trial "for a supreme offence against international morality and the sanctity of treaties."⁶ The Treaty was the first to affirm the principle that "persons accused of having committed acts in violation of the laws and customs of war should be brought to trial in international

3. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal ("Nuremberg Charter"), Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280 (entered into force Aug. 8, 1945) [hereinafter Nuremberg Charter], 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. The Nuremberg Charter established individual criminal responsibility for crimes against peace and humanity, as well as for war crimes, and qualified them in detail in legal terms.

4. Convention on the Prevention and Punishment of the Crime of Genocide, adopted Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 278 [hereinafter Genocide Convention].

5. J. BROWNLY, *MEZHDUNARODNOYE PRAVO* 253 (1997).

6. Treaty of Peace between the Allied and Associated Powers and Germany, June 28, 1919, art. 227, 2 Bevans 43, S. Treaty Doc. No. 66-49, reproduced in 13 AM. J. INT'L L. 151 (Supp. 1919) [hereinafter Treaty of Versailles].

tribunals.”⁷ International criminal prosecution of war criminals was originally linked with the Nuremberg and Tokyo tribunals, which set forth the basic principles of cooperation of states.

During the post-World War II period, the interaction of states that affirmed the foundation for humanism and the inevitability of punishment for infringements of humanism were concentrated under the aegis of the United Nations and the International Committee of the Red Cross. When the political climate in the world changed, the work on codification continued,⁸ and specialized structures of international criminal justice were established.⁹ The idea of a permanent International Criminal Court (“ICC”), which until recently seemed incomprehensible, materialized at the Diplomatic Conference in Rome in 1998.

II. MODERN DEVELOPMENTS IN THE FIGHT AGAINST GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY

The universality of international cooperation in the fight against genocide, war crimes, and crimes against humanity is developing several specific features in its present-day period. One important aspect is the number of states that are parties to inter-

7. *Id.* art. 228.

8. Several conventions were adopted following World War II. *E.g.*, Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (collectively “1949 Geneva Conventions”); Genocide Convention, *supra* note 4; Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, May 14, 1954, 249 U.N.T.S. 240; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Dec. 16, 1968, 754 U.N.T.S. 73, 8 I.L.M. 68; Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Dec. 12, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1291; Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, 16 I.L.M. 1442.

9. The U.N. Security Council established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia in 1993 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda in 1994.

national conventions.¹⁰ A more important matter is that the fight against genocide, war crimes, and crimes against humanity is a dominant theme in affirming the principles of humanity in modern international relations. With the global block confrontation becoming a notion of the past, the task to minimize the suffering among civilian populations during a wave of local conflicts acquires urgency. Today's generation of conflicts is characterized by acts of extreme cruelty committed outside the battlefield. The world community has learned about practices such as ethnic cleansing, mass rapes, and the trafficking of human beings.

It is not by chance that the numbers of international instruments and structures that deal with the fight against genocide, war crimes, and crimes against humanity have multiplied. Definitions of their *corpus delicti*¹¹ have become part of international criminal justice statutes. The definitions are included in the code of crimes against peace and humanity that the U.N. International Law Commission introduced in 1996. They are also present in resolutions of the U.N. Security Council, General Assembly, Economic and Social Council, Commission on Human Rights, and other international bodies. The definitions are also widely used in states' national legislation and, correspondingly, in judgments of national courts¹² and international criminal tribunals.¹³ The necessity to seek a comprehensive and universal interpretation of genocide, war crimes, and crimes against humanity, therefore, is a subject of practical work. Considering all of the experience accumulated in the post-World War II period, it is hardly possible to overestimate the codification of the defini-

10. For example, 129 states are parties to the Genocide Convention, and 188 states are parties to the 1949 Geneva Conventions.

11. See BLACK'S LAW DICTIONARY 344 (6th ed. 1990) (defining *corpus delicti* as body, foundation, or substance of crime).

12. The prosecution of Nazi criminals and their accomplices, such as Klaus Barbie and Paul Touvier in France, and Imre Finta in Canada, introduced new elements to the concept of crimes against humanity.

13. For example, unlike the Nuremberg Charter and the Statute for the International Criminal Tribunal for the Former Yugoslavia ("ICTY Statute"), which established clear links between crimes against humanity and a military conflict, the ICTY Statute gave it a different interpretation in its judgement on the Tadic Case. The tribunal stated, "It is by now an established rule of customary law that crimes against humanity do not have to be connected to any conflict at all." Prosecutor v. Dusko Tadic, Case No. IT-94-1-T (May 7, 1997), Opinion and Judgment, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber.

tions in the Statute of the International Criminal Court ("Rome Statute").¹⁴ The Preparatory Commission for the ICC's thorough interpretations of the elements of genocide, war crimes, and crimes against humanity will be important not only for the activities of the ICC, but also for other aspects of international criminal justice. The interpretations were also intended to be of practical assistance to national bodies of justice.

The international community's decision to establish the ICC as a permanent institution of international criminal justice has become a historic event. The decision was the result of a long process. Many factors played an important role in the decision, including a considerable accumulation of international humanitarian norms that required a mechanism of criminal prosecution, higher standards of international justice and ethics, the tremendous shock caused by cruelties of new conflicts, and, most importantly, the end of an era of political and ideological confrontation blocks. Today's objective is to make the ICC function successfully as soon as possible, ensuring its recognition by, and participation of, as many states as possible.

III. PREVENTING GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY

Eradication of genocide, war crimes, and crimes against humanity presupposes prevention of these crimes. Eradicating these crimes involves a wide range of measures at both the international and national levels. One priority is to popularize knowledge about international humanitarian law (or "IHL") among military personnel and civilians. It is difficult to disagree with the participants of the International Conference of Non-Governmental Organizations who, in the Hague Agenda for Peace and Justice for the Twenty-first Century, stressed "a need for greater awareness of international humanitarian and human rights law among national lawmakers and law enforcers."¹⁵ It is also important to encourage the establishment of national structures of both a public and non-public nature. Such structures could im-

14. 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 the United Nations on July 17, 1998), *reprinted in* 37 I.L.M. 999.

15. U.N. GAOR, 54th Sess., Annex, Agenda Item 23, at 11, U.N. Doc. A/54/98 (1999).

plement IHL norms in national legal systems, including improving norms of national legislation.

It is necessary to establish stricter control over the implementation of IHL norms. The International Red Cross Committee could play an important role in establishing such control. It is also worth considering an expansion of the functions of the International Fact-Finding Commission, which functions in accordance with Article 90 of Additional Protocol I to the Geneva Conventions of 1949. Additionally, it is necessary to consider establishing a committee within the framework of the Geneva Conventions to review states' observations of their obligations.

Diplomacy designed to settle military conflicts, during the course of which individuals commit genocide, war crimes, and crimes against humanity, is an important means of preventing the commission of such crimes. Humanitarian diplomacy also presupposes delivering messages that the international community addresses to parties in military conflict. The messages could be supported, if necessary, by measures of effective pressure within the framework of international law. The messages should address the unacceptability of committing such crimes, and the inevitability of punishment for committing them.

IV. *HUMANITARIAN INTERVENTION*

A response to those who fail to abide by the standards of humanity should be made within a strictly observed legal framework. There are no objectives, however noble, that could justify illegal means. Illegal means compromise noble objectives. Illegal means concern attempts to use force to bypass the U.N. Charter to punish entire nations for crimes committed by individuals. As Igor Ivanov, Minister of Foreign Affairs of the Russian Federation, noted,

[S]uch use of force becomes the hostage of political preferences and biased interpretation of events. One cannot judge who is right and who is wrong and punish the guilty single-handedly without any mandate of the international community. This is a straight way to an anarchy and chaos in the world.¹⁶

In the context of the Kosovo situation, the arguments most

16. Igor Ivanov, *NEZAVISIMAYA GAZETA*, June 25, 1999.

widely used to justify such powerful methods are based upon the so-called "humanitarian intervention" concept. The following statement made by the British Foreign Office in 1986 criticizes humanitarian intervention:

The overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention for three main reasons: first, the U.N. Charter and the corpus of modern international law do not seem to specifically incorporate such a right; secondly, State practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its cost in terms of respect for international law.¹⁷

Bruno Simma, a prominent German attorney, argues that obstacles to the legalization of humanitarian intervention can only be removed through a change in the norms of the U.N. Charter.¹⁸ He makes his argument pursuant to Article 53 of the Vienna Convention on the Law of International Treaties of 1969, which indicates that a departure from a peremptory norm of common international law is inadmissible.¹⁹ Such norms can only be changed by subsequent norms of common international law having the same *jus cogens* character.

We are far from insisting that the principle of non-use of force should block practical implementation of other fundamental principles of international law, including respect for human rights and protection from genocide, war crimes, and crimes against humanity. As emphasized at the international confer-

17. U.K. Foreign Office Policy Document No. 148, *reprinted in* 57 BYIL 614 [1986].

18. Bruno Simma's Paper, *NATO, the UN and the Use of Force*, was presented at two Policy Roundtables organized by the U.N. Association of the United States in New York and Washington, D.C., on March 11, 1999 and March 12, 1999, respectively.

19. A judgment of the International Court of Justice ("ICJ") contains an explicit idea that the laws of the U.N. Charter concerning the non-use of force are of a peremptory nature, or *jus cogens*. In particular, the ICJ supported the conclusion of the U.N. Commission of International Law, by noting that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*." *Nicaragua v. United States*, 1986 I.C.J. 14, 100.

ence, Centennial of the Initiative of Russia: From the First Peace Conference of 1899 to the Third of 1999,²⁰ there is not, and cannot be, a hierarchy of principles of international law. All principles are interrelated, mutually support each other, and should be considered in each other's context.²¹ The entire system, therefore, is comprehensive, and its implementation is intended to eliminate "humanitarian catastrophes," "ethnic cleansing," and acts of aggression. Selecting separate parts out of the system can only result in its destruction, and is fraught with chaos in international relations.

The U.N. potential to maintain international peace and security, including its human rights dimension, is far from exhausted. As the U.N. Secretary General Kofi Annan said during his visit to Slovakia in July 1999, facts that were initially understood as weakening the U.N. Security Council, in final analysis, confirmed its indispensable role. Recent events in Kosovo also demonstrated the need for the United Nations, and proved that the international community will need it for a very long time. Boris Yeltsin's June 1999 initiative for the development of a concept of the world in the twenty-first century, in which legal aspects of the use of force in international relations under conditions of globalization should become a key component, follows the same direction. Russia proposes to discuss this topic during the U.N. Millennium Summit in the year 2000.

V. PUNISHMENT FOR GENOCIDE, WAR CRIMES, AND CRIMES AGAINST HUMANITY

One of the core issues in fighting genocide, war crimes, and crimes against humanity is to assure the inevitability of punishment for committing such crimes. The legal framework of approaches to assuring punishment is determined in legal doctrines and in several international treaties. The essence of the

20. The conference took place in St. Petersburg on June 22-25, 1999.

21. Such an approach has been fixed in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, which states that for the purpose of interpretation and implementation, the principles contained in it "are interrelated and every principle should be considered in the context of other principles." Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess. Supp. No. 28, at 123, Doc. A/8028 (1970).

approaches is that a statute of limitations cannot be applied to genocide, war crimes, and crimes against humanity, and criminal prosecution is compulsory. In practice, however, these legal schemes are not always strictly observed. For example, in El Salvador, in the interests of national reconciliation, and with regard to peculiarities of the political situation and condition of the judicial system, a line, in fact, was drawn under the crimes committed during the conflict in the country. Additionally, the Truth Commission, created afterwards, could not unequivocally answer whether criminal prosecution was possible or advisable. Furthermore, the U.N. Security Council welcomed the Ceasefire Agreement for the conflict in the Democratic Republic of the Congo,²² which provides for the possibility of amnesty for crimes in countries where such a measure is considered useful. The Ceasefire Agreement does, however, recognize that amnesty does not extend to genocide.²³

The U.N. Security Council also welcomed the Sierra Leone Peace Agreement,²⁴ signed in Lomé on July 7, 1999, which extends even further. This agreement stipulates that after it is signed, "the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement."²⁵ This agreement compelled the Secretary General to instruct his Special Representative to sign the agreement with the explicit proviso that the United Nations held an understanding that the amnesty and pardon provided for in the agreement did not apply to international crimes of genocide, war crimes, crimes against humanity, and other serious violations of international humanitarian law.²⁶

The scheme of the Charters of the International Tribunals for the Former Yugoslavia²⁷ and Rwanda²⁸ is based on other

22. S.C. Res. 1258, U.N. SCOR, 4032nd mtg. at 1, U.N. Doc. S/RES/1258 (1999).

23. U.N. SCOR, U.N. Doc. S/1999/815 (1999).

24. S.C. Res. 1260, U.N. SCOR, 4035th mtg. at 1, U.N. Doc. S/RES/1260 (1999).

25. *Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, U.N. SCOR, Annex, at 15, U.N. Doc. S/1999/777 (1999).

26. U.N. SCOR, at 2, U.N. Doc. S/1999/836 (1999).

27. Statute for the International Criminal Tribunal for the Former Yugoslavia, adopted at New York, May 25, 1993, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993), 32 I.L.M. 1159.

28. Statute for the International Criminal Tribunal for Rwanda, adopted at New

principles. These charters envisage the possibility of criminal prosecution regardless of national decisions. The activities of the tribunals contributed notably not only to ensuring the inevitability of punishment for specific individuals guilty of genocide, war crimes, and crimes against humanity, but also to the development of international criminal justice as a whole. The International Tribunal for the Former Yugoslavia's decisions in *Prosecutor v. Erdemovic*,²⁹ concerning the role of coercion in the commission of crimes, and *Prosecutor v. Blaskic*,³⁰ regarding the significance of rumor-based evidence, became remarkable landmarks in this way. The International Tribunal for Rwanda's decision in *Prosecutor v. Akayesu*, adjudging Jean-Paul Akayesu guilty of genocide, is the first international verdict on this crime.

The Tribunals' experiences, however, are valuable not only for their achievements, but also for the weak points of their efforts to form common denominators of international criminal justice. The Charter of the ICC substantially restricted the principle of jurisdictional priority for international tribunals over that of national courts, an idea that the Charters of the International Tribunals for the Former Yugoslavia and Rwanda envisaged. It is possible that this restriction was linked to the fact that the issue was not the prosecution of a specific category of individuals, limited by a geography and time. The issue was instead the development of an all-purpose mechanism of criminal prosecution that considerably increased the level of responsibility for each state participating in the ICC. Such an approach rests upon the perception that although genocide, war crimes, and crimes against humanity are global-level problems, and not purely national ones, the ICC should not necessarily try every person who commits a universal crime. Domestic courts can also do their part as, for example, the Spanish courts are endeavouring to do in the case against Augusto Pinochet.

Extradition to international tribunals is a particularly delicate issue. Difficulties arise regarding suspects in the former Yugoslavia and Rwanda, as well as for those far beyond these coun-

York, Nov. 8, 1994, S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994), 33 I.L.M. 1598.

29. Sentencing Judgement, *Prosecutor v. Erdemovic*, Case No. IT-96-22-T (ICTY, Trial Ch. I, Nov. 29, 1996).

30. *Prosecutor v. Blaskic*, Case No. IT-95-14, Decision (Trial Chamber, Int'l Crim. Trib. former Yugo., Jan. 21, 1998).

tries' borders.³¹ Nevertheless, a majority of states have certain legal limitations relating to the extradition of suspects to the tribunals. Included among such states are those whose legal systems do not contain strict provisions on extradition,³² and those that, assuming the requirements of their national legislation have been met, have concluded corresponding agreements with the International Tribunals for the Former Yugoslavia and Rwanda. Pursuant to U.S. extradition law, for example, when a judge or magistrate "deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, . . . he shall certify the same . . . to the Secretary of State, that a warrant may issue . . . for the surrender of such person."³³ Australia and New Zealand have legislation that directly envisages the possibility of refusing to extradite alleged criminals in "special" (Australia) and "exceptional" (New Zealand) circumstances, while in both countries the decision to extradite rests solely with the Attorney-General.³⁴

It is also important to avoid politicization of international criminal justice institutions that could lead to "double standards" and selectivity in their activities. The International Tribunal for the Former Yugoslavia's issuance of warrants to arrest Slobodan Milosevic, the President of the Federal Republic of Yugoslavia, and several other Yugoslav leaders when the North Atlantic Treaty Organization ("NATO") military operation against this country was going full blast, therefore appears to be politically motivated. At the same time, serious violations of international humanitarian law committed by the NATO Air Force during this operation, such as massive bombings of civil facilities, have not been properly assessed.

A certain degree of "selectivity" is inevitable because no institution of justice is capable of subjecting all offenders to responsibility. This concept is especially true if there are numer-

31. See, e.g., Barbara Crossette, *Rwandan in Genocide Case Makes Last Appeal To Stay in U.S.*, N.Y. TIMES, Aug. 15, 1999 (describing long-drawn decision on extradition in U.S. courts to International Tribunal for Rwanda of Rwandan priest, Elizaphan Ntakirutimana, accused of organizing assassination of hundreds of Tutsi Rwandans who sought shelter in his church in 1994).

32. An example of a legal system that does not contain strict provisions on extradition is a Constitution-stipulated prohibition to extradite a country's own citizens.

33. 18 U.S.C. § 3184 (1994).

34. For details, see Sheila O'Shea, *Interaction Between International Criminal Tribunals and National Legal Systems*, 28 N.Y.U. J. INT'L L. & POL. 367, 377-85 (1996).

ous offenders, as in the former Yugoslavia. Nonetheless, for moral and political reasons, and for the sake of historic impartiality, it is necessary to strive for international criminal justice institutions that appropriately address the degree and extent of involvement of all parties to an armed conflict into committing crimes.

States' fulfillment of their commitments to cooperate with international criminal justice institutions is also a very important issue. In the case of the International Tribunal for the Former Yugoslavia, it is difficult to agree with attempts to extend the framework of cooperation to the International Stabilization Force ("Force"), in particular, the Force's realization of prearranged measures on an armed arrest of suspects pursuant to warrants that the International Tribunal for the Former Yugoslavia issued³⁵ and, in contempt of its mandate, the U.N. Security Council approved. At the same time, the use of *closed indictments* becomes more frequent. Individuals under the suspicion of the International Tribunal for the Former Yugoslavia should not be detained without the consent of the state in which the individuals are present. The Dayton Accords, corresponding resolutions of the U.N. Security Council, and the Charter of the International Tribunal for the Former Yugoslavia clearly stipulate that extradition to the Hague of individuals accused of war crimes must be realized through cooperation between the parties and the Tribunal. That is, the activities of the International Tribunal for the Former Yugoslavia, created in accordance with the U.N. objectives and principles, should not contradict these principles. Such an approach should be strictly followed in practice. Departure from it, and, in particular, unjustified power pressure to ensure States cooperation with the International Tribunal for the Former Yugoslavia, can seriously complicate the situation in the region and undermine confidence in this important institution of international justice.

No matter how sophisticated the legal schemes of criminal prosecution are, reality has its impact upon them. The international community is currently at the initial stage of applying

35. Recent examples are the capture of the Serbian general, Radovan Karadzic, in December 1998, and the killing of the Bosnian Serb, Dragan Gagovic, in January 1999, which resulted from the attempt of the French International Stabilization Force's contingent soldiers to arrest him.

criminal repression for comparatively new categories of crimes, including genocide, war crimes, and crimes against humanity. While building structures of international criminal justice, it is necessary to consider that the structures should not become an obstacle to the efforts to settle conflicts that generate the commission of the crimes in question. According to U.S. lawyers Siegfried Wiessner and Andrew Willard,

[I]f a violent conflict or genocide is in progress, the expectation of punishment may not by itself be likely to end the conflict. Ironically, it may prolong the plight of the persecuted, since persecutors may conclude that they have no alternative but to fight to the bitter end to avoid the consequences of their misdeeds International criminal courts may send a message to people elsewhere contemplating massive violations, but they may do nothing to reconstruct the civil society that has been disrupted.³⁶

International criminal repression is only part of the work to prevent crimes, restore peace, and consolidate confidence in the human rights and triumph of humanism. It should be harmoniously combined with other components of these efforts, and should complement the other components, not dilute them. International criminal repression should also strengthen peace and create a safe society.

In recent decades, a specific form of ascertaining personal responsibility, truth commissions, has become more frequent. Truth commissions are sometimes created in addition, and in some cases as an alternative, to criminal prosecution of persons implicated in massive war crimes and crimes against humanity. At least twenty countries created truth commissions in various forms. The initiative of the Hague Appeal for Peace, to “examine the failures and successes of past truth commissions and political amnesties, as well as proposals for new truth commissions in Bosnia, East Timor, and elsewhere,”³⁷ is worth attention.

36. Siegfried Wiessner & Andrew R. Willard, *Policy-Oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity*, 93 AM. J. INT'L L. 316, 316-17 (1999).

37. U.N. GAOR, 54th Sess., Annex, Agenda Item 25, at 11, U.N. Doc. A/54/98 (1999).

CONCLUSION

The experience of the international community in combating genocide, war crimes, and crimes against humanity indicates that the fight against these evils is bound with efforts to support international peace and security. Even when genocide and crimes against humanity are not committed in the context of armed conflicts, they launch a challenge against peaceful development of states and people. These crimes, without regard to the circumstances in which they are committed and who their perpetrators or "sponsors" are, represent the outrage on human rights, and encroachment on the fundamentals of human morality and humanism.

Post-World War II history indicates that it is the United Nations that is the central figure in the struggle for peace and reinforcement of human dignity. The U.N. Charter provides great possibilities for improvement of international cooperation in fighting genocide, war crimes, and crimes against humanity. Entering the new millennium, the international community should efficiently use those possibilities while adhering to the solid basis of the U.N. Charter and international law in general.