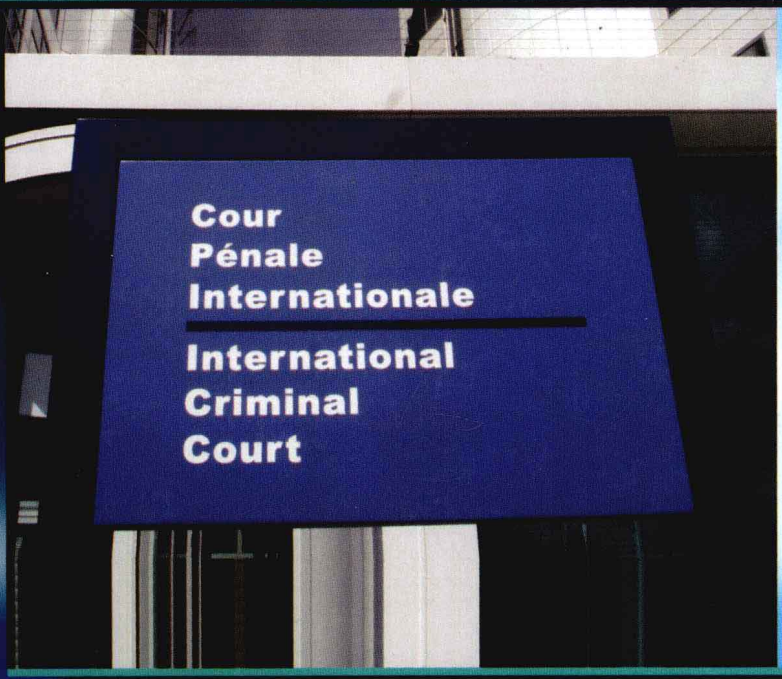
Peace and Justice at the International Criminal Court

A Court of Last Resort

Errol P. Mendes



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Preface

There are times when those who work in the Academy or in public service who focus on justice and human rights may have doubts that human progress is possible given the horrors that the world has witnessed in the last century and the first decade of the 21st Century. This was certainly the case for this author after close to two decades of academic and professional work in the fields of international human rights, justice and law. Then came along the opportunity to experience first hand the work of those in the international arena who devote, not only their professional lives, but also much of their personal lives to building a global institution the primary function of which is to promote peace and justice among our human family. The institution was the International Criminal Court the historic establishment of which is the culmination of centuries of humanity's desire to promote the idea that sustainable peace is only possible in the absence of impunity, as the first chapter of this work will discuss.

It was at the end of 2008 that I readily accepted an invitation to be a Visiting Professional at the International Criminal Court in The Hague during the spring and summer of 2009. I opted for a position in the Legal Advisory Section of the Office of the Prosecutor. This choice was deliberate because I wished to understand how the early investigations and prosecutions were being shaped by the Office of the Prosecutor and, in particular, by the Chief Prosecutor, Luis Moreno-Ocampo.

The experience was immensely enriching as it made me realize that theoretical perspectives of the relationship between the search for peace and the thirst for justice in the intense conflict zones of our world must be tempered with the actual facts on the ground and the reality that the truth lies somewhere between extreme positions on whether peace trumps justice or justice trumps peace.

As the discussion on the conflict in Northern Uganda reveals in Chapter 3 of this book, the solution may be neither a peaceful settlement nor justice fulfilled, but instead may lie only a military endgame. In the spring and summer of 2009, I also learned that the interplay between desired prosecutorial strategies and ultimate judicial outcomes is hugely complex and rarely predicable, given the great challenges of a permanent international criminal tribunal in gathering evidence, producing and protecting witnesses, creating or building upon new modes of criminal liability while

attempting to reconcile civil and common law methods of prosecution and judicial decision making.

Given the enormous complexity of the historic challenge laid before the International Criminal Court to combat impunity for the most serious crimes known to humanity and to promote the cause of international justice, there is fertile ground for the armchair critics to throw unexamined barbs at the Court and its officials. The impact of such critiques could undermine the critical support from the international community needed for the future strengthening of the Court and could even imperil its legitimacy. For this reason, this work has attempted to examine the main critics and present contrary perspectives based on what was experienced first hand while at the Court. In particular, the criticism that the Court has imperiled peace in Sudan in its drive to impose accountability on high officials, including the President, has the potential to cause, in my view, unjustified undermining of the Court. This is the focus of Chapter 2.

However, it is also acknowledged that those who are immersed in the daily challenges and complexities involved in the work of the Court should not lightly cast aside legitimate critiques of the Court or its officials. There is no global institution that is perfect. Certainly, given the fact that this historic global institution is in its infancy, it would be unreasonable for there not to be room for improvement and mistakes to be rectified. It also became clear that the global fight against impunity as regards the most serious of international crimes cannot be fought alone by the Court. The co-combatants must be the entire international community and global civil society along with regional and multilateral organizations. To leave this global fight only to the International Court is to program it for failure, as Chapter 4 of this work discusses.

The genesis of the work therefore comes from the linking of decades of theoretical perspectives with the exigencies of real world facts and practical applications of international humanitarian and criminal laws constitutionalized in the Rome Statute of the International Criminal Court. The result is a work that denies that there is a zero sum game between peace and justice. That type of analysis is the preserve of the armchair critic. Nevertheless, the final chapter of this work identifies the potential threats to the future of the Court and how they can be dealt with.

It is up to the international community together with regional and multilateral organizations to help the International Criminal Court become an instrument for both peace and justice. Adapting the wisdom of Martin Luther King – a denial of justice anywhere is a threat to peace and justice everywhere.

Professor Errol P. Mendes
Ottawa, December 21, 2009

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This work would not have been possible without the support, advice, friendship and mentorship of an outstanding group of individuals dedicated to the cause of international justice, sustainable peace and the fight against impunity. These individuals include Phillipe Kirsch, who was instrumental in establishing the Rome Statute of the ICC and became the first President of the International Criminal Court, Luis Moreno- Ocampo, Chief Prosecutor of the International Criminal Court, Hans Bevers and Rod Rastan, Legal Advisors, Office of the Prosecutor of the International Criminal Court, Olivia Swaak-Goldman, International Cooperation Advisor, Office of the Prosecutor, Pierrick Davidal, Sudan Information Analyst, Office of the Prosecutor, Silvana Arbia, Registrar of the International Criminal Court and Richard Goldstone, former Chief Prosecutor, International Criminal Tribunal for the Former Yugoslavia.

In addition, mention must be made of the wonderful Australian couple, Greg and Glenda Lewin, who shared their house, their friends and generous hospitality while in The Hague and reinforced my belief in the inherent goodness and kinship of humanity regardless of country or race.

I would also like to thank my excellent research assistant, Michelle Lutfy, a most promising international law and international relations student, for assisting with the research and editing of the book. Likewise, I would also like to acknowledge the professionalism of Tara Gorvine, the Acquisitions Editor of Edward Elgar Publishing Inc. who helped greatly with the shaping of the contents of this book.

Finally, the greatest acknowledgment goes to my family and in particular my spouse, Sharon Lefroy, without whose support and patience this book would not have materialized, nor indeed would I have had the ability to take time off from family obligations to match theory with practice.

Contents

1 The Court as offspring of centuries of peace with justice

1. JUSTICE MAY BE BRED IN THE BONES OF HUMANKIND BUT PROGRESS IS SLOW

The International Criminal Court, which came into operation on July 1, 2002, is the offspring of more than five centuries of humanity struggling to link peace with justice. For that reason it is absurd to pit the Court at the centre of a peace versus justice dilemma.

This first chapter will discuss how the lessons of history demonstrate the link between the fight against impunity and the prevention of the most serious international crimes. However, as Chapter 4 will discuss, the concept of prevention discussed in this work does not involve the traditional concepts of specific and general deterrence, but offers up the alternative view of prevention as the creation of a global moral and legal culture that promotes the outlawing of impunity and the accordance of pariah status for those who fall outside this evolving global culture.

Even before the modern era of nations and positive domestic and international laws, we have seen in the slow progress of humankind a persistent view that even in the bloodlust of war, there had to be limits to what constitutes a legitimate war and what men in arms could do to both combatants and those not in the furor of battle. The concepts of justice in or for war termed '*ius in bello*' and '*ius ad bello*' can be traced to ancient Greek and Roman philosophers and to the teachings in the Old Testament and transformed again in the natural law teachings of Saint Augustine regarding what constitutes a '*just war*'.[1]

In this evolution of principles of just war or justice in war, through the pre-modern era, the progress of human justice seemed to demand that those who engaged in the violence of war or armed conflict had to observe evolving common standards of humanity, if any semblance of a return to peace was to endure after the violent combat ended and in the interests of a sustainable peace. One of the earliest recorded trials and punishments in Europe meted out by a local tribunal constituted by representatives of the Holy Roman Empire for crimes committed during the occupation of the town of Breisach was that of Peter von Hagenbach who was

executed on conviction of war crimes in 1474. The trial and punishment, while significant, may also have been used to cover the responsibility of von Hagenbach's superior, the Duke of Burgundy, whose orders he was following.

In the context of more recent history, it should not be forgotten that the International Criminal Court (ICC) is a creation of international law, which itself is a product of the desire of humanity to link the desire for peace and security with universal concepts of justice.

One of the earliest architects of international law, Hugo Grotius, in the early part of the 17th Century linked the right of states to use violence only for defensive purposes and the notion that those who waged war with illegal or wrongful intent would have to be held accountable for their actions. At the earliest stages of the formulation of international law, Grotius was already focusing on the need for justice to accompany the ending of war:[2]

> Furthermore, according to the principles which in general terms we have elsewhere set forth, those persons are bound to make restitution who have brought about the war, either by the exercise of their power, or through their advice. Their accountability concerns all those things, of course, which ordinarily follow in the train of war; and even unusual things, if they have ordered or advised any such thing, or have failed to prevent it when they might have done so.
>
> Thus also generals are responsible for the things which have been done while they were in command; and all the soldiers that have participated in some common act, as the burning of a city, are responsible for the total damage. In the case of separate acts each is responsible for the loss of which he was the sole cause, or at any rate, was one of the causes. . .

The driving force of a major part of international law right up to the early part of the 20th Century was to develop processes such as bilateral and multilateral treaty negotiations and organizations to limit the illegal use of force by states and ensure that judicial mechanisms could settle disputes that could trigger wars and other violent conflicts. It is not an accident of history that the scene of much of these developments seems to end up at the European countries of the Netherlands and Switzerland, and in particular the cities of The Hague, the present site of the International Criminal Court, and Geneva, the city that gives its name to the laws of war.

The Swiss architects of the modern laws on war crimes and crimes against humanity, Gustave Moynier and Henri Dunant, saw the horrifying impact of battles on the dying and the wounded during the Napoleonic wars, especially at the battle of Solferino. They pressed for rules to limit the

brutality of the battlefield and for basic rules of humanity for the wounded and the non-combatants. After founding what eventually became the International Committee of the Red Cross, the two Swiss humanitarians were successful in getting the Swiss government to convene negotiations on the laws of war that would eventually become the Geneva Conventions of 1864. The purposes of these earliest international rules that put limits on what was permissible in situations of war included the humane treatment of sick, wounded or out-of-combat soldiers and allowing unimpeded access to medical aid provided by neutral organizations such as the Red Cross. Moynier sought to have a convention drafted for an international criminal court to prosecute breaches of the Geneva Conventions, but was not successful. That would have to wait for another century and more events to happen to trigger the establishment of a permanent court.[3]

In the 19th Century, President Abraham Lincoln commissioned international law jurist Francis Lieber to draft the military code for the Union Army regarding rules of war concerning prisoners of war, the wounded and civilians under occupation.[4] If ever there was a leader who realized that justice both *ad bello* and *in bello* was required to promote a sustainable peace after the conflict 'with malice to none and charity for all' it was President Lincoln.

The Hague Conventions of 1899 and 1907 were a turning point in the move to the establishment of the positive laws of armed conflict in the form of an international treaty. The Conventions drew and expanded on the earlier Geneva Conventions and the Lieber Code to create the first substantial body of the laws of war and armed conflict. Acknowledging the growing plight of civilians in such conflicts, the Hague Conventions established some of the first major provisions dealing with the protection of civilians in regulations annexed to the Conventions, while stating in the preamble 'the inhabitants and the belligerents remain under the protection and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience'. This famous statement in the preamble to the Hague Conventions, known as the Martens Clause, recognizes the possibility of a common human understanding of what is required by the public conscience of nations during armed conflicts,[5] the satisfaction of which is a *sine qua non* of any notion of sustainable peace in the aftermath of war.

The major weakness of the Hague Conventions, however, was that they imposed obligations only on states and did not pretend to extend to imposing criminal accountabilities on individual transgressors of the provisions of the Conventions. However, the Hague Conventions did establish in the modern era that a body of international law called humanitarian

law dealing with the laws of war and crimes of war would be a common standard for all nations. The future would foretell that repudiation of such common standards of humanity would result in the bloodiest century of modern history.

At these earliest attempts to codify the common standards of humanity in armed conflict, there was an acknowledgment that a lack of accountability for violations of these common standards would hinder the prospect of a durable peace. In the view of one writer, the failure of the 1899 and the 1907 Hague Peace Conferences to achieve peace with justice brought on the horrors of World War I.[6]

In 1915, the World War I Allies had announced that the Turkish slaughter of the Armenian population was a new crime against humanity and civilization, for which all members of the Ottoman government and their agents would be held responsible.[7]

However, the Allies did not follow through on the need to enforce the newly established norm of crime against humanity and the threatened prosecutions of the Turkish government representatives in the 1920 Treaty of Sèvres did not materialize as Turkey did not ratify the Treaty. Instead, the subsequent Treaty of Lausanne extended amnesties to the perpetrators of the newly established crimes against humanity.[8]

This act of impunity by the Turkish government in the face of the newly established norm of crimes against humanity was noted by a future leader who would go on to instigate a global military conflict and commit the greatest mass slaughter in human history, namely Adolf Hitler. In justifying his decision to invade Poland on August 22, 1939, and send millions of men, women and children to their death 'mercilessly and without compassion' in that country in order to create more '*Lebensraum*', the greater living space for the German people, he uttered a sentence that should link indelibly the concepts of peace and justice in humanity's conscience:

> Who, after all, speaks today of the annihilation of the Armenians?[9]

Sadly, in the words of the German philosopher Hegel, one of the few things that the international community learns from history is that it does not learn from history. The inability to follow through on those charged with war crimes, including the emerging concept of responsibility for wars of aggression, was repeated at the end of World War I when the victorious Allies proposed to try Kaiser Wilhelm II for 'a supreme offence against international morality and the sanctity of treaties', but failed to follow through after the Netherlands refused to extradite him. The Kaiser had taken refuge there. However, the 1919 Treaty of Versailles did recognize the right of the Allies to try German military personnel for war crimes.

Yet again, the political will seemed to be lacking and few trials of German soldiers occurred, with minimal sentences handed down.[10] The failure to establish an effective justice process in the aftermath of the first global war could well have emboldened the leaders of the future Third Reich to instigate their slaughter of millions of civilians. The lesson of the early 20th Century seems to indicate that the failure to follow through on justice imperils the prospect of peace in the future.

In the aftermath of the slaughter and genocidal horrors of World War II, the victorious Allies finally seemed to realize the importance of linking justice with the prospect of sustainable peace in the future. Some of the Allied leaders, including Churchill and the influential U.S. Treasury Secretary Henry Morgenthau, had initially persuaded President Roosevelt to commit the antithesis of justice, namely the swift execution of the core Nazi leadership. However, there was a realization that a sustainable peace in Europe demanded an accounting by the Nazi leaders for their horrible crimes before an international tribunal of law. The U.S. Secretary of War Henry Stimson argued against this form of victors' vengeance pointing out the links between peace and justice:[11]

> We should always have in mind the necessity of punishing effectively enough to bring home to the German people the wrongdoing done in their name, and thus prevent similar conduct in the future, without depriving them of the hope of a future respected German community. (Those are the two alternatives.) Remember, this punishment is for the purpose of prevention and not for vengeance. An element in prevention is to secure in the person punished, the conviction of guilt. The trial and punishment should be as prompt as possible and in all cases care should be taken against making martyrs of the individuals punished.

There was renewed determination in the Moscow Declaration of 1943 by the Allies that those who had initiated the war and had committed war crimes had to stand trial regardless of where those crimes were committed.

In preparing the groundwork for the Nuremberg Trials of the Nazi war criminals, the London Conference of August 1945 led by the four main Allied powers incorporated the Hague Conventions, the stillborn Kellogg–Briand Pact that proposed the norm of crime against peace and the crimes against humanity concept crystallized in the context of the Armenian genocide. The Tokyo Tribunal that would try the Japanese war criminals also incorporated these earlier attempts to link justice with the peace in the aftermath of the war in the Asia Pacific.

The Agreement for the Prosecution and Punishment of Major War Criminals and the Charter of the International Military Tribunal were

adopted on August 8, 1945. The Agreement and Charter for the Tribunal established the criminal liability of those charged before the Nuremberg Trials. The details of such criminal liability would foreshadow the definition of serious international crimes that would be listed as being within the jurisdiction of the future ICC: conspiracy to commit crimes against peace; planning, initiating and waging wars of aggression; war crimes and crimes against humanity. Again, foreshadowing the *modus operandi* of the ICC, the focus of the indictments was not aimed at lower level German military personnel, but at twenty-four individuals who gave birth to the title of their trial, namely the Trial of the Major War Criminals. After a long and historic hearing that lasted almost a year, the Tribunal handed down twelve death sentences and convicted nineteen other major Nazi leaders. The trials of thousands of Nazi officials of lesser rank continued in Germany and elsewhere, reaching their zenith in the abduction, trial and conviction of Adolf Eichmann in Israel on December 11, 1961.

While the Nuremberg trials were criticized for being a form of victor's retribution or vengeance, the demands and foundations of justice recognized by human civilization over the centuries required that there be an accounting for the atrocities committed by the major Nazi leaders. Indeed, the particular criminal liability of crimes against humanity was a recognition that past criminal atrocities, such as the Armenian genocide, could not go unpunished if future similar actions were to be deterred. The fact that the impunity of those who had orchestrated the Armenian genocide was used by Adolf Hitler to justify the Holocaust is conclusive proof of this requirement for an accounting for crimes against humanity.

The Nuremberg Trials were followed widely in Germany and throughout the world. While Germans might have been more comfortable with a German court trying the top leadership of the National Socialist regime, the imperatives of a sustainable peace in Europe required that the population face the horror that was committed in their name and for them to willingly cooperate in the post-war effort to purge the country of the Nazi philosophy that had led to the most gruesome atrocities that humanity had ever experienced.

One basis of criminal liability was still waiting to be established, namely the crime of genocide. Although the Nuremberg prosecutor used the term 'genocide' to charge the major Nazi war criminals, this ground of criminal liability was yet to be established. The origins of that criminal liability had been proposed since the 1930s with the tireless work of Polish lawyer Rafael Lemkin. He was so appalled by the horror of the Armenian genocide, the Iraq Arameans in the 1930s and finally the Second World War Holocaust, that he began a life's work to establish the crime of attempts to wipe out in whole or in part an entire group of people, which he termed

genocide. His campaign was finally successful when, on December 9, 1948, the U.N. General Assembly passed the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention entered into force on January 12, 1951. The historic definition of genocide in Article II of the Genocide Convention would reverberate down the years and we find the same definition substantially unchanged in Article 6 of the Rome Statute of the ICC.

While the Genocide Convention called for the establishment of a permanent international crime of genocide, it lacked the essential feature of enforcement through an independent tribunal which could attach criminal liability on individuals in the manner that future ad hoc international criminal tribunals and the ICC could accomplish. Instead the Genocide Convention provided only that prosecution of this most serious of international crimes would proceed either at the national or the international level before a penal tribunal the jurisdiction of which Contracting Parties had agreed to. There had been a proposal to establish a Court to hear allegations of genocide in earlier drafts of the Genocide Convention but, as with those who opposed the creation of the ICC, some of the members of the international community argued that the time was not ripe for such an institution.

2. THE CAMPAIGN FOR JUSTICE, BEFORE AND AFTER THE COLD WAR

The fleshing out of the details of any such future tribunal would be left to the International Law Commission which had also just been established. In the 1950s both the International Law Commission and the U.N. General Assembly were the prime movers on the establishment of draft codes of international crimes and started work on the drafting of the statute of an international criminal court. However, the Cold War placed severe ideological barriers to progress on both fronts and the impacts of the condoning of such international crimes were felt by the peoples of East Timor and many other fronts where the Cold War raged.

The history of the Cold War is replete with the evidence that justice is not a dispensable option to a sustainable peace either in a country, a region or indeed for the entire international community.

From the genocides in Cambodia and East Timor to the slaughter of civilians in Indonesia, South and Central America and in the Soviet Union, the prevalence of impunity for serious international crimes extended around the world and to both sides of the Cold War. The failure of the U.N. Security Council and its permanent members to either prevent

or stop an unfolding of genocides and mass slaughter, such as the one that killed up to a third of the population in East Timor, would register in the minds of many of the drafters and supporters of the ICC Statute in Rome in 1999.

One casualty of the Cold War was the efforts by the ILC to draft and establish a permanent international criminal court. The ILC had submitted drafts of the statute of such a court along with a draft code of offenses. However, the U.N. and its member states had moved the international justice agenda to the side in the face of opposing ideological camps.[12]

With the end of the Cold War, it is an irony of international justice history that it was the fear of the exploding global narcotics trafficking, rather than exploding impunity, that triggered the move by the international community and the international human rights movement to establish the ICC. In 1989, the two Caribbean states of Trinidad and Tobago were successful in getting the U.N. General Assembly to pass a resolution requesting that the ILC take up again the task of considering the establishment of an international criminal court that could deal with drug trafficking along with its ongoing work on a draft code of international crimes.

By 1994 the ILC had completed the task of developing the main procedural and organizational structure of the court, but would not complete the task of drafting the 'Code of Crimes Against Peace and Security of Mankind' until 1996. These documents would become the foundations of both the ad hoc Tribunals for Yugoslavia and Rwanda and later for the ICC.

The history and legacy of the ad hoc Tribunals for Yugoslavia are in many respects the emergence of both a local and a global thirst for justice in the aftermath of the demise of the Cold War and the guilt arising out of the failure of the United Nations and the major powers in the Security Council to live up to the promise of 'never again'.

Yugoslavia, a country of historically warring ethnic groups, was one of the first casualties of the failure of the U.S. and other major powers to establish a new global order of peace and security with the fall of the Soviet Union. With the death of Marshal Tito, aspiring Serbian leaders would ignore the basic standards of humanity and use the disintegration of the multiethnic state to gain territorial and political power at any cost.

In the immediate aftermath of the declaration of independence by Bosnia in March of 1992, President Slobodan Milošević of the Federal Republic of Yugoslavia (FRY) and his army together with the Bosnian Serbs, led by the soon to be indicted war criminals Radovan Karadžić and General Ratko Mladić, initiated a savagery unmatched since World War II. The atrocities reached their zenith in the siege of Sarajevo and the massacre at Srbrenica that shocked the conscience of the world, but saw little

action from the U.N. Security Council or the assembled economic and military might of Europe.

The United Nations Commission of Experts' report on the war crimes in Bosnia revealed the horrific details of what would soon be judged in individual cases to be war crimes, crimes against humanity and, as regards Milošević, the ultimate crime of genocide. He would die before judgment was passed on his crimes.[13] Over 200,000 people would perish before the Dayton Peace Accord ended the war.

The U.N. Commission of Experts on Bosnia warned that preventing such crimes is as much a moral cause as a military cause which demands that the international community ensure such horrors do not reoccur and strongly proposed the establishment of an international tribunal to hold the main perpetrators of these crimes accountable:[14]

> The United Nations experience in Bosnia was one of the most difficult and painful in our history. It is with the deepest regret and remorse that we have reviewed our own actions and the decisions in the face of the assault on Srebrenica. Through error, misjudgment and an inability to recognize the scope of evil confronting us, we failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder. . .. Srebrenica crystallized a truth understood only too late by the United Nations and the world at large: that Bosnia was as much a moral cause as a military conflict. The tragedy of Srebrenica will haunt our history forever.
>
> In the end the only meaningful and lasting amends we can make to the citizens of Bosnia and Herzegovina who put their faith in the international community is to do our utmost not to allow such horrors to recur. When the international community makes a solemn promise to safeguard and protect innocent civilians from massacre, then it must be willing to back its promise with the necessary means.

The U.N. Secretary General, Kofi Annan, agreed with the Commission Report, and in November of 1999 apologized for the U.N.'s failing in Bosnia. The Security Council decided on February 22, 1993, to agree with the recommendations of the Commission and called for the establishment of a criminal tribunal to prosecute 'persons responsible for the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991'.[15]

In a subsequent Security Council Resolution, the Statute of the International Tribunal for the Former Yugoslavia (ICTY) was adopted on May 8, 1993.[16] The Statute of the ICTY was to apply the customary international law rules of humanitarian law and its territorial jurisdiction would be limited to the former Yugoslavia. The Court could prosecute for international crimes that started in 1991. There was an unspoken

consensus in the Security Council and the international community that without the main organizers and perpetrators of the conflict in the disintegrating Yugoslavia being held to account, the prospect for an enduring stability in the Balkans would be greatly diminished.

Sadly the consensus to hold to account those responsible for the gravest of international crimes only after the international community had so abjectly failed to stop it in the first place would be repeated in Rwanda. The report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda produced similar views stating categorically that 'The United Nations failed the people of Rwanda during the genocide in 1994'.[17]

The report urged far more effective genocide prevention strategies, which included the obligation under the Genocide Convention to 'prevent and punish' genocide. Given these two independent reports, it is hard to fathom those who argue that in the interests of peace, whether temporary or not, those who perpetrate the worst crimes known to humanity should not be held accountable.

Rwanda itself requested the Security Council to establish the second ad hoc international criminal tribunal for the genocide by the previous Hutu government and its militias. In November of 1994, the Security Council acceded to the request and created the Rwanda Tribunal for the prosecution of genocide and other serious violations of international humanitarian law committed in Rwanda and neighboring countries in 1994.[18]

The legacy of both Tribunals, but more substantially the ICTY, is of very progressive approaches to the interpretation of international humanitarian law and human rights law that have transcended the principles from the Nuremberg Trials. The most important of the progressive interpretations of the law by the ICTY on the gravest of international crimes by both Tribunals is that crimes against humanity can be committed outside international conflicts, that war crimes can be committed during internal conflicts and that those who have organized, perpetrated and aided and abetted these crimes can and will be held accountable. While some have argued that the tribunals appeared to be motivated by the guilt of the international community for failing to stop the mass slaughter in the Balkans and Rwanda, both were regarded as essential to the restoration of peace and security.

The U.N. Security Council in setting up the ICTY stated that, even with the ongoing crimes constituting a threat to international peace and security, the Tribunal would assist in putting an end to such criminality and 'contribute to the restoration and maintenance of peace and security'.[19]

The ICTY itself made the link between peace and justice in the following manner:[20]