

Beyond Fear: The Triumph of International Humanitarian Law

by Mark Goldberg

There is a common affliction today that subconsciously threatens a generation of young American writers and social critics concerned about the direction of U.S. foreign policy. As war rages abroad and terrorists threaten us at home, fear increasingly dictates our national course; amidst a general and physical fright we posit only the tired formula of reacting to disaster. With mounting national hysteria, the imagination that is required to transcend conflict somehow escapes us. In a panic, the only question we know to ask is: when will the next attack come?

In a symbiotic relationship with those who actually wish to do us harm, fearmongers who plot U.S. foreign policy bait us with this basest human emotion, scaring us into acquiescence. We readily accept the counterintuitive notion that halting progress toward a common body of international law will somehow make us safer and more secure. Proponents of this philosophy would have us believe that only an America free to wield its power, unfettered by voices of caution or the dictates of international law, can guarantee its citizens' security. The United States is unrivaled in its military and economic muscle, and the unwavering stability of our democracy is the envy of the world—yet we remain vulnerable. Under the ethos commonly referred to as neo-conservatism, only one course of action emerges: become even mightier and consolidate global power so as to deter new threats as they emerge.

But those who refuse to languish in this general malaise are beginning to ask a very different question: can the world's sole superpower really provide global leadership pursuing a foreign policy predicated on fear and anxiety? An ideology that sustains itself by preying on fear necessarily suspends us in a paralysis of social progress; to simply endure until the next crisis erupts condemns us to a cycle of human stagnation. This is progress's staunchest foe.

Yet hope remains, for humanity's natural state is neither static nor reactionary. Rather, history shows that the steady march of human progress prevails over quasi-theological dialectics that pit "us" against the threatening "other"—or, in the inimitable words of George W. Bush, between "people who hate things versus we who love things."

Advancement beyond this primitive concept of world order surrounds us. Humanity's most shining example is the steps it has taken toward fashioning an ever-expanding body of international humanitarian law. Once thought an impossible task, we now have a stable cannon of law to punish—and ultimately to prevent—crimes of war. That old realist adage "in time of war, law is silent" no longer rings true. Efforts since World War II to define genocide and crimes against humanity, as well as labors to restrict the use of inherently indiscriminate weapons, represent a countervailing culture of optimism—a culture with tangible successes that deserve to be celebrated.

The origin of *crimes against humanity* as a judicial concept was the result of a deliberate choice of the Nuremberg prosecutors, who lacked adequate legal precedent to punish the full scope of Nazi atrocities. Amid great controversy, and contrary to the demands of arch realists who felt that sovereign nation-states remained the only legitimate actors in international relations, the legal definition of crimes against humanity elevated the rights of the human person to a level of legitimate concern for the international community. The inclusion of crimes that didn't (then) fall into the definition of a war crime—either because the perpetrator and victims belonged to the same state (for example, the German Jews), or because the victims belonged to a nationality of a state that was allied to that of the perpetrator (for example, Austrian Gypsies)—revolutionized the laws that govern warfare. The world awoke to a new reality in which the need to punish systematic human rights abuses can supervene sovereignty in international law. That nationality need not determine the right of a victim to seek justice through international law remains the bedrock of human rights law to this day.

Parallel to the creation of crimes against humanity was the invention of *genocide* as a category of war crimes. Samantha Power, in her Pulitzer Prize-winning tome *A Problem From Hell: America and the Age of Genocide*, presents a compelling history of the term. Coined by Raphael Lemkin, a Polish Jew who lost forty family members during the Holocaust, Power argues that the term wasn't originally intended to exclusively communicate the horrors of the

Nazi extermination campaign. Rather, Lemkin, who moonlighted as a Yale law professor, tirelessly crusaded for a utilitarian legal definition of *genocide* that would force countries to formally call for its outlawing. With the codification of the *Convention on the Prevention and Punishment of the Crime of Genocide* in January 1950, Lemkin finally succeeded. As Nuremberg had set precedent for the limitation of state sovereignty, “Lemkin’s law” challenged the international community to come up with a strategy to punish and prevent future genocides and crimes of war.

The world community waited a long time to implement a proactive legal regime to fulfill Lemkin’s vision. In May 1993—fifty-three years and five months after the Genocide Convention—the United Nations finally coalesced to establish a court to respond to the horrors unfolding in the Balkans. The International Criminal Tribunal for the former Yugoslavia (ICTY) was the result of prodigious efforts of a world community united to prevent serious violations of international humanitarian law from once again befalling the European continent. Though the widows and fatherless daughters of those massacred in Srebrenica are sad proof that the mere presence of the ICTY failed to dissuade the likes of Ratko Mladic and Radovan Karadzic early on, the tribunal must be recognized as an ultimately successful experiment in international justice.

The tribunal has been the foremost contributor to the development of international humanitarian law and the international judicial system over the past fifty years. It is the first court of its kind to prosecute war crimes since Nuremberg and the first to include genocide as a crime punishable under its statute. Furthermore, the statute itself is a collection of humanitarian provisions taken from international treaties and customary law of disparate legal traditions. By consolidating these provisions into one coherent volume, the authors of the statute provide a common legal and philosophical foundation upon which future war crimes can be prosecuted.

The tribunal’s greatest achievement, however, is that it has proven that a modern war crimes judicial procedure can function successfully. Beginning with the conviction of Dusko Tadic, a relatively low-level concentration camp guard, the ICTY established the precedent that firmly pierced the shield of state sovereignty. Later, in the trial of Radislav Krstic—a commander in Srebrenica who fashioned himself the “Serb Adolph”—it handed down the first genocide conviction in the history of the world. Finally, the ongoing trial of Slobodan Milosevic marks the first time a world leader has landed in the dock for war crimes committed under his watch. Though his trial has yet to con-

clude, and a conviction for the count of genocide in Bosnia is far from certain, the trial of Milosevic can already be considered a milestone toward the triumph of international justice. Beyond a doubt, it will provide a model for the future prosecution of political leaders-cum-war criminals.

The arrest and trial of Milosevic demonstrated to the world that a war crimes judicial procedure can achieve “regime change” even with the most entrenched criminal leaders. Milosevic’s indictment, which reads as a “how-to” manual for aspiring political thugs, details a history of manipulating weak regional politicians, ruthless dealings with political opponents, and incitement to slaughter or deport entire civilian populations. Though the United States, the North Atlantic Treaty Organization, and the wars’ victims had long desired a permanent settlement, Milosevic’s criminal regime maliciously stifled any progress toward peace in the region. By the time the Serbian army rolled into Kosovo, Milosevic’s hatchet men operated out of nationalist fervor, slaughtering innocents in village after village. In June 1999, NATO and Serbia finally brokered an agreement that ended NATO bombing and granted a degree of autonomy to the Kosovo province. Though this eventually resulted in Milosevic’s ouster, he still remained a major source of regional instability. As head of a mafia-style network, he retained enough power to manipulate regional politics and instill fear in his would-be rivals. House arrest proved an insufficient means for diminishing Milosevic’s power and only after his physical removal to a detention facility in the Hague did his influence in the region begin to wane.

A similar pattern emerges in the events surrounding the exile to Nigeria of Liberia’s former strongman Charles Taylor. A politically expeditious agreement, this hastily arranged exile in August 2003 has done little to prevent Taylor’s continued meddling in Liberian politics. Although the UN Special Court in Sierra Leone has indicted Taylor for crimes against humanity, he enjoys the unrestricted use of telecommunications equipment and is in frequent contact with his political allies in Monrovia. In October 2003, reports that Taylor negotiated an arms deal from his Nigerian bungalow lead the United States to issue a \$2 million bounty for his arrest and transport to the Sierra Leone court.

Both Taylor’s mischievous behavior in exile and Milosevic’s prototypical prosecution illustrate that the basic function of a war crimes tribunal—to dislodge high-level criminals from their political spheres of influence—can ultimately complement the primary goal of any war crimes judicial process: to render to victims a sense of justice. By permanently removing criminals from power, war crimes tribunals distance tyrants from their modus operandi,

thereby diminishing their political influence in regions they once ruled by fear.

The systematic purging of corrupt criminal members of a national government through a transparent judicial process is a necessary feature in any healthy transition to liberal democracy. In countries ravaged by war, a war crimes judicial process affirms the moral demands of the war's bystander victims. Concurrently, it can promote the interests of democratic powers, most prominently the United States, which view the spread of liberal democracy as vital to their national interests. Just as a jailhouse in the Hague separated Milosevic from his Balkan bully pulpit, so can future war crimes prosecutions add value to a genuine American desire to bring peace and stability to the world's most oppressed, bloodstained regions.

Though a war crimes judicial process has already proven its worth as a useful method for dealing with the most heinous of political leaders, the Bush administration views the next body to enforce international humanitarian law—the International Criminal Court (ICC)—as an institution somehow inherently hostile to American interests. As opposed to the ICTY and its sister institution in Rwanda (which are both ad hoc), the ICC is a permanent body with global reach. When the doors of the ICC's Office of the Prosecutor opened in the summer of 2003, international humanitarian law took one enormous leap forward. Those malicious criminals in forgotten corners of the earth who terrorize civilian populations through the guise of war will no longer be able to act with impunity. At a press conference in August 2003, the ICC's chief prosecutor indicated that his office formally opened an investigation into suspected crimes against humanity in the Ituri province of the Democratic Republic of the Congo. Later, pointing to a photograph of an emaciated woman who had been gang raped and had all her four limbs amputated by roaming militants, the prosecutor declared, "*she* is my type of client."

Though progress toward the universal enforcement of international humanitarian law is evident everywhere, humanity remains at a crossroads. Atavistic forces are leading us down the path of mere survival in which *machtpolitik* and law of the jungle ensures that only the strongest of our species survive. Slobodan Milosevic, or any world leader that measures human worth in terms of power and weakness, could be a regrettable spokesperson for this regressive course of civilization. The indefatigable zeal with which the Bush administration opposes the ICC flows from a disturbingly similar anachronistic world-view. Spurred by an overly enthusiastic reading of Hobbes' *Leviathan*, the neoconservative architects of U.S. foreign policy fear that

the ICC will undermine the United States' ability to bring order to an inherently violent world. This irrational fear that the ICC will function as Lilliputian tether to American unilateralism drives the Bush administration's policy planners' reckless determination to discredit the young court.

Additionally, in a paranoid fantasy, panicked policy planners understand the court solely as part of a global conspiracy to prosecute American soldiers for exclusively political ends. From this imagined, embattled position, the Bush administration has launched a full-scale campaign against the court. Under the rubric of "bilateral immunity agreements," the Bush administration has barred Americans from the court's jurisdiction in the territory of an ever-increasing number of signatory nations. The agreements themselves are rather unremarkable, given the Bush administration's open hostility for multinational agreements. Stunning, however, is the undiplomatic methods in which U.S. diplomats negotiate these accords. Bush administration officials effectively strongarm weaker nations into accession by threatening economic sanction should they refuse. In a cruel twist, this process has played itself out in Serbia even though the U.S.-backed ICTY routinely prosecutes Serb nationals for war crimes.

In addition to sending a contradictory message about the unequivocal illegality of war crimes, the Bush administration's relentless effort to secure the greatest number of bilateral immunity agreements induces the most paradoxical of U.S. foreign policy decisions. By forcing weaker countries into treaties that exclude Americans from the ICC's jurisdiction—and threatening sanctions should they refuse—U.S. policy actually penalizes countries that believe in the rule of law rather than those which commit human rights abuses.

As inheritors of the next world order, my generation is rightly concerned about the Bush administration's tenuous relationship with international humanitarian law—but there is little cause to be dismayed. The synchronistic emergence of the ICC with the Bush administration's neoconservative agenda is actually more serendipitous than it is tragic. Supporters of enlightened internationalism can look optimistically to the future precisely because the ICC represents the latest triumph for a world-view that discredits reactionary realist antinomianism.

But change doesn't happen on its own. The task of my generation is to take harness of these new international experiments that provide humanity with a master narrative beyond that of simple survival. To transcend this basic urge and craft new methods of international organization will

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human beings to seek to establish a global society where things like economic servitude and human rights violations don't exist, and where each person is free to live out the course of his or her life without these limitations. As such, we can't be content with employing only economic means.

Hence, the alternative I propose is to concentrate on neither boycotting goods nor purchasing them but rather in appealing to the U.S. government to pass laws prohibiting companies which sell products in American markets from violating human rights in the production of their goods. The best way to bring about lasting change is legally. Americans abroad are prohibited from committing certain acts that, while legal abroad are illegal at home. This prohibition stems from moral scruples. For instance, an American in a Middle Eastern brothel is prohibited from purchasing a child prostitute. Why can't we use the same reasoning and logic to prohibit corporations from employing labor practices abroad which don't conform to American standards of

workplace safety and human rights? After all, one of the key goals of American foreign policy is the protection of human rights. Thus we should prevent corporations which violate such rights from doing business in the United States.

As our world becomes increasingly interconnected, it is necessary to maintain our principles. We can't allow ourselves to be satisfied with empty gestures that make us feel better about ourselves without eliciting any actual change. Empathy is an important part of the process, but empathy is useless without action. To say that helping workers abroad is done by taking small steps at home is a wonderful way to garner publicity, but without a coherent, organized movement that ultimately culminates in legal change, it is impossible to guarantee all people the human dignity to which they ultimately have a birthright.

Anna Yesilevsky, a student at Harvard University, is twenty-two years old. This essay placed second in the eighteen-to-twenty-four-year-old age category of the 2004 *Humanist* Essay Contest for Young Women and Men of North America.

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ensure, in the words of William Faulkner, "that the indomitable human spirit...will not merely endure, but prevail."

The international courts of today are a good start, for at the least they have the potential to reduce needless human suffering. But beyond this basic role they serve a grander purpose: to test the limits of our imagination. An ever-expanding body of international humanitarian law, if followed to its natural conclusion, will relegate ideologies of power and fear to history's dustbin. To carry this torch of human progress from strength to strength is a charge we gladly accept. For this, in essence, is humanity in action.

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to the "civic spaces"—such as village greens, places of religious worship, or community schools. It is also equally important to focus on the education of youth in their native values and traditions. Teens especially need a counterbalance images of American consumerism they absorb from the media. Even if individuals or countries consciously choose to become "Americanized" or "modernized," their choice should be made freely and independently of the coercion and influence of American cultural imperialism.

The responsibility for preserving cultures shouldn't fall entirely on those at risk. The United States must also recognize that what is good for its economy isn't necessarily good for the world at large. We must learn to put people before profits. The corporate and political leaders of the United States would be well advised to heed these words of Gandhi:

I do not want my house to be walled in on all sides and my windows to be stuffed. I want the culture of all lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any.

The United States must acknowledge that no one culture can or should reign supreme, for the death of diverse cultures can only further harm future generations.

Julia Galeota of McLean, Virginia, is seventeen years old. This essay placed first in the thirteen-to-seventeen-year-old age category of the 2004 *Humanist* Essay Contest for Young Women and Men of North America.

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