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PROTECTING HUMAN RIGHTS DURING AND AFTER CONFLICT: THE ROLE OF THE UNITED NATIONS*

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I. INTRODUCTION

A deep and abiding ambiguity affects the subject of the United Nations and human rights. Human rights are at once a central concern of the United Nations, as well as a consistent frustration to it. Before examining this ambiguity in regard to the UN and conflict situations, a few introductory comments are in order.

On the one hand, the United Nations was founded, in part, to protect human rights. According to articles 1 and 55 of the UN Charter, a fundamental purpose of the United Nations is to “promote universal respect for and observance of human rights.” Specifically, there are three principal ways this objective is pursued.

One is standard-setting, or articulating and legalizing the international human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights,

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and the large number of other covenants and declarations that define and constitute "internationally recognized human rights." A second way is promoting human rights in the sense of educating the world community, of promulgating human rights standards, and of disseminating and coordinating human rights information.

The third and most problematic way concerns the implementation of human rights, which in turn involves at least three subtasks. There is the obligation to monitor human rights violations, including efforts to anticipate, and to seek to prevent violations through early warning, mediation or conciliation and through publicizing possible or alleged violations. Secondly, there is the obligation to respond to violations through pressure or what is called the "mobilization of shame." Finally, as a last resort there is the possibility of taking stronger action to deter or reduce violations by imposing sanctions or other punitive measures and to secure relief for the victims of those violations by delivering humanitarian aid.

These objectives and tasks are pursued and carried out by certain UN organizations and agencies, four of which deserve special attention. One is the Human Rights Commission, which is a functional committee of the Economic and Social Council. In the early days, it undertook to draft the Universal Declaration, which under the direction of Eleanor Roosevelt was completed and adopted in 1948. Ever since, the commission has been responsible for developing and overseeing the vast array of international human rights instruments and documents that now exists. Beyond that, the commission supervises numerous working groups on subjects such as slavery, indigenous populations, minorities, detention, etc., as well as appointing special rapporteurs to selected countries to monitor the human rights performance of those countries. It also appoints special rapporteurs to supervise compliance with standards regarding torture, emergency and the like. Lastly, the Human Rights Commission meets once a year to hear reports and recommendations regarding the human rights performance of selected states.

The second body of note is the so-called Human Rights Committee, which is authorized in the International Covenant on Civil and Political Rights to supervise compliance with that convention. The Human Rights Committee entertains annual reports from member states and in addition, accepts complaints by individual citizens in the case of those governments who have signed an additional protocol.

The third institution to be mentioned is the UN Center for Human Rights in Geneva, which is the office of the UN Secretariat charged with conducting fact-finding and producing reports in connection with the activities of the Human Rights Commission and the Human Rights Committee. The Center also supports the work of the special rapporteurs. Finally, there is the recently-appointed UN High Commis-

sioner for Human Rights who is at present Jose Ayala-Lasso. His main responsibility is to oversee and coordinate all of the various UN human rights activities.

However, if human rights is a central concern of the UN, which commands a certain degree of institutional commitment, the subject is also a consistent frustration. The frustration is basically financial and structural. It is financial, in the sense that less than one percent of the overall UN budget goes to the promulgation, promotion, and implementation of human rights, a fact made even more alarming by the failure of the major powers, including the United States, faithfully to pay their UN dues.

There are also structural problems and these are perhaps the most important of all. Not least of them is the uncoordinated proliferation of UN human rights activities. High hopes have been expressed that the new Commissioner of Human Rights can help to alleviate some of the problems, but that remains to be seen given his small staff and his minuscule funding.

The larger difficulty, however, begins with the fact that the United Nations is not an effective international authority, one capable of consistently enforcing international human rights. Therefore, even though human rights standards may be adequately articulated, and relatively well disseminated and affirmed (in theory), there are serious deficiencies regarding implementation. In the case, for example, of the Human Rights Commission, it lacks the necessary teeth to enforce its judgments regarding the human rights violations of one country or another. Instead of the impartial and reliable system of human rights adjudication and implementation that was originally envisioned, standards get applied sporadically and selectively, and in a way that is subject most decidedly to political influence.

A passage from a recent report concerning human rights and UN field operations in the Iran-Iraq war highlights this problem of political influence:

[During the Iran-Iraq war,] the United Nations had shown a distinct preference for Iraq in its public statements and actions, reflecting the undisguised support for Iraq on the part of the three Western permanent members of the Security Council, the United States, Britain and France.

The Iraqi government's use of chemical weapons against Kurdish civilians and fighters alike in 1987 and 1988 have provoked hardly a squeak from the UN. Even when Saddam Hussein's repression of the Kurds drove hundreds of thousands from their villages in the North in 1988 and led to the disappearances of tens of thousands more . . . the UN system remained disengaged from Iraqi atrocities.

[After the 1991 Gulf War,] there came a 180-degree turn in the treatment that UN accorded to Iraq's human rights abuses—from lassitude to forthright condemnation in the strongest possible terms. The world body's

public rhetoric on human rights in Iraq changed . . . in the light of political shifts by the major powers.¹

II. THE UN ROLE REGARDING HUMAN RIGHTS AND CONFLICT: TWO EXAMPLES

We shall now take up two cases illustrating UN efforts to implement human rights during and after conflict, namely, the examples of the former Yugoslavia and El Salvador. The former Yugoslavia illustrates as poignantly as any case the frustrations that attend UN attempts to implement human rights, particularly the structural obstacles I alluded to, including the problem of political pressure. As an effort to protect human rights, this case can only be judged as a disastrous failure on the part of the UN and supporting actors. By contrast, El Salvador represents a more positive case. If for no other reason than to keep spirits up, it is useful to examine why the second example worked out so favorably. Having considered both cases, we may draw a few tentative comparative conclusions.

A. *Former Yugoslavia*

In this case, the grossest of human rights violations were committed deliberately and systematically throughout the four years of war, with only the mildest and most ineffectual of responses from the United Nations and supporting actors.² The conclusion of the Human Rights Watch Report is hard to gainsay:

UN peacekeeping and other efforts in both Croatia and Bosnia-Herzegovina have been marked by timidity, disorganization, unnecessary delay and political indecision . . . UN operations in the region have been hampered by competition between member states and the Secretary General; disputes between the Secretary General and UN personnel in the field; member states' unwillingness to commit necessary financial resources; and violations of the arms and trade embargoes by several nations.³

Such malfeasance is epitomized by the experience of Tadeusz Mazowiecki, Poland's first post-communist prime minister who in August, 1992, was appointed UN Special Rapporteur for Human Rights in

1. HUMAN RIGHTS WATCH, *THE LOST AGENDA: HUMAN RIGHTS AND UN FIELD OPERATIONS* 135 (1993).

2. We should not allow the claim regarding the need to reconsider the validity of human rights in their present form, expressed several times in the conference, to obscure the fact that in cases like the former Yugoslavia, certain primary human rights protection against arbitrary killing, torture, abusive confinement, forcible relocation, etc. are indisputably binding upon all parties, and constitute a clear standard against which all participants should be held accountable.

3. HUMAN RIGHTS WATCH, *supra* note 1, at 85-86.

the former Yugoslavia. By all accounts, Mazowiecki's performance was exceptional. His dedication, integrity and conscientiousness were of the highest quality in face of huge obstacles, including all of the shortcomings I briefly alluded to earlier, and some others in addition. Nearly three years after he was appointed, Mazowiecki summarily resigned his job in protest. His career as Special Rapporteur symbolizes the difficulties and shortcomings of the UN's approach to protecting human rights.

Mazowiecki was appointed to his job in an unprecedented emergency session of the Human Rights Commission. Because of the blatant evidence of severe human rights violations in the former Yugoslavia, it called a special session and immediately selected the former Polish prime minister, giving him the following mandate:

[T]o investigate firsthand the human rights situation in the former Yugoslavia and to receive relevant, credible information on the situation there from governments, individuals, intergovernmental and nongovernmental organizations on a continuing basis, and to avail himself of the existing mechanisms of the Commission on Human Rights.⁴

Over the three-year period, Mazowiecki issued eighteen human rights reports addressing the allegations of ethnic cleansing, genocide, mass rape, and the other gross atrocities characteristic of the conflict. The reports were widely respected and repeatedly heralded as conscientious, trenchant, objective, and unsparing. Mazowiecki reported violations on all sides with admirable impartiality and unrelenting thoroughness.

As early as August 1992, and repeatedly thereafter, Mazowiecki urged that certain remedies be undertaken, some of which were eventually adopted as Security Council Resolutions, but most of which were never effectively enforced. A few notable examples:

- That the mandate of UNPROFOR—the UN protection force—should be expanded so as to include deactivating all heavy weaponry in the area of Bosnia-Herzegovina.

- Pressure should be put on military authorities to discontinue the policies of ethnic cleansing (Resolution 771, August 1992, condemning ethnic cleansing).

- Military authorities should be warned that they and subordinates are liable for war crimes (subsequently reformulated and passed as Resolution 827 in May 1993, authorizing the establishment of the International War Crimes Tribunal—one of Mazowiecki's few successful recommendations).

4. Special Rapporteur Report of 28 August 1992, E/CN.4/1992/S-1/9, cited in Konstanty Gebert, *Reporting is Not Enough*, in *WITH NO PEACE TO KEEP* 111 (Ben Cohen & George Stamkoski eds., 1995)[hereinafter Special Rapporteur Report].

◦ That detention camps be dismantled, prisoners freed, and perpetrators of atrocities brought to justice.

◦ That "safe areas" be created for protecting refugees (eventually culminating in Resolution 836, issued in June 1993). The Resolution so designating Srebrenica and five other locations is arresting: "to enable UNPROFOR to take all necessary measures, including the use of force, to deter attacks, monitor ceasefire, [and] promote withdrawal of military units . . . in and around the safe areas." As the policy of safe areas unfolded, Mazowiecki appealed urgently to Boutros-Ghali to supply adequate troops to enforce security. Tragically, such support was, of course, never forthcoming.

In carrying out his task, Mazowiecki encountered considerable criticism. Certain of the NGOs believed he should have named names in his report. He contended, to the contrary, that the indictment and prosecution of individual offenders was the obligation of the War Crimes Tribunal. From his point of view, his main objective was to identify crimes and to call them to the attention of the world community, despite the fact that he received little cooperation and even active hostility from all parties, particularly the Serbs.

There were, in addition, other difficulties. Mazowiecki was never sure, he said, whether the tiny budget allotted for his operation would be met. When he requested human rights field workers early on in his assignment, they did not arrive until six months later! Beyond that, he encountered significant structural problems. There was very little coordination and, consequently, considerable bureaucratic confusion and obstructionism. In some parts of the UN, commitment was weak, and the implementation of human rights regarded as of secondary importance. The only UN agency obliged to consider Mazowiecki's reports was the Commission on Human Rights, a body that, as we saw, met only once a year and was already overloaded with extensive responsibilities. The Security Council was not obliged to consider the reports of the Special Rapporteur, and it did so only in a very irregular and desultory fashion.

Mazowiecki was, in short, faced with an example of colossal institutional ineptitude and weakness of will. From the start, he was frustrated at having his reports ignored:

[I]t is not possible to limit the mandate to the preparation of reports containing facts and expressing opinions which are then presented to UN bodies. The mandate should lead to urgent and concrete activities to benefit the suffering populations. Atrocities were constantly being accepted and glossed over by people in various areas of responsibility relating to the conflict . . . It was obvious that my job fulfilled simply an alibi function . . . [T]hose who ap-

pointed me probably thought we can at least speak out about and condemn the atrocitiesYet from the very beginning, I was of the opinion, that involvement is only possible if I could help people on the spot and not just write papers to satisfy the UN and its members.⁶

On July 27, 1995, Mazowiecki became the highest ranking UN official ever to resign in protest. A short time before, UNPROFOR had failed to prevent the fall of Srebrenica and Zepa, two UN-designated safe areas. This lack of determination symbolized for Mazowiecki the failure of the entire UN policy for protecting human rights in the midst of conflict. His words of resignation are memorable and exactly to the point:

The international community should abandon its hypocrisy towards Bosnia. For we are claiming that we are defending it while we are, in fact, abandoning itOne cannot speak about the protection of human rights with credibility when confronted with the lack of consistency and courage displayed by the international community and its leaders.⁷

There is a sobering epilogue to Mazowiecki's resignation and to his concluding assessment of the failed role of the UN in the former Yugoslavia. In the aftermath of the conflict, the UN plays no significant role in protecting human rights or anything else there. The Dayton Accords were neither brokered nor are they primarily enforced by the United Nations. What is more, the Organization for Security and Cooperation in Europe has been charged with the responsibility of monitoring human rights in Bosnia rather than the UN and UN human rights institutions are only marginally involved. These facts speak for themselves.

B. *El Salvador*

The UN role in protecting human rights during and after the bloody twelve-year conflict in El Salvador is a very different and rather more encouraging story. A recent report published by the Lawyers Committee for Human Rights—*Improvising History: A Critical Evaluation of the United Nations Observer Mission in El Salvador*⁸ (known as ONUSAL)—judges that mission to have been “fundamentally a success.”⁹ And this judgement is confirmed by a Human Rights Watch Report which states there is a rare consensus among Salvadorans of divergent political views that ONUSAL's presence has, in fact, dramatically reduced the incidence of human rights abuses both before and

6. Special Rapporteur Report, *supra* note 4, at 113-114.

7. *Id.* at 111.

8. IMPROVISING HISTORY: A CRITICAL EVALUATION OF THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR: A REPORT OF THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, DEC. 1995(New York 1995)[hereinafter IMPROVISING HISTORY].

9. *Id.* at 4.

during the cease fire. The Human Rights Watch Report summarizes the essentials effectively:

The case of El Salvador shows both the feasibility and the importance of a more energetic human rights agenda. Because of the sophistication of the Salvadorans themselves and the vision of the UN officials involved, human rights played a central role in the UN-sponsored peace process. Even before the peace accord, one hundred UN Human Rights Monitors were deployed in the country to deter abuses and to build a climate of confidence in which both sides could make the compromises necessary for ending the war. The size of the monitoring force and its deployment throughout the country made it a credible force, and its right to enter detention facilities without prior notice gave it a unique ability to verify detention practices. The peace accord, signed in 1992, provided for continued UN monitoring. It also established a Truth Commission to provide an official accounting of the abuses of the prior twelve years, a restructuring of the security forces to neutralize some of the most abusive agencies, and a purging from the army of those who had been responsible for gross abuses. While problems remain, the prospects for lasting peace are greater in El Salvador than in other conflict-torn countries where the UN has had a presence—for example, in Cambodia, Somalia or, of course, the former Yugoslavia. The prominent role accorded human rights is an important reason why.¹⁰

To be sure, neither of these reports is altogether uncritical. Both register objections and apprehensions regarding the performance of ONUSAL. Moreover, particularly the Lawyers' Committee Report highlights some deep tensions between politics and human rights implementation which affect the situation in El Salvador. Still, when it comes to the UN and human rights—especially in the light of the UN's record in the former Yugoslavia, any good news is to be appreciated.

Although it is important not to forget some of the difficulties, the way the UN addressed human rights in El Salvador made a constructive contribution and set what are possibly some very important precedents. As it turned out, human rights emerged as the foundation for an eventual peace agreement between the government and the FMLN (the Farabundo Marti de Liberacion Nacional). In the San Jose Accords arrived at in July 1990, mutual commitment to human rights was the thing both sides could agree upon even though they went on fighting and even though the continuing peace talks would not produce a final peace settlement until January 1992.

The point is that the UN interjected itself into the Salvadoran conflict in the name of human rights and it was precisely devotion to the cause of human rights that helped advance the peace settlement. The real innovation of the accords was the commitment both sides made to international verification. That meant a large, resident mission of foreign observers with the right to move freely as monitors, to investigate

10. HUMAN RIGHTS WATCH, *supra* note 1, at 2.

alleged human rights violations, to issue reports, to make recommendations, and so on. Although it is not clear that either side fully understood what it was signing onto when it admitted human rights monitors into the country, it was these very arrangements that helped the peace process forward.

There are several reasons for that. One is that the presence of the monitors discouraged either side from breaking off the peace talks. Second, once the final peace accord was signed, there was a basis for increasing the supervisory role of the UN in working with the police and the military to implement the accord. Third, ONUSAL's presence very likely had a deterrent effect on the conduct of the conflict itself and in the words of the Lawyers' Committee Report would "actually save lives as the war entered its final phase."¹¹ In fact, then Secretary General Perez de Cuellar used this argument in the Security Council to recommend that the observer mission be expanded before the end of the hostilities.

Moreover, human rights provisions were central to the final peace accord itself. For example, there was included in the final agreement provision for a Truth Commission whose obligation it was to investigate and report on human rights violations which had taken place throughout the Salvadoran conflict. The Truth Commission heard roughly 2000 witnesses in connection with some 22,000 cases of alleged human rights violations.

In March 1993, the Commission issued its report *From Madness to Hope* calling for complete military reform, a special investigation of state-tolerated death squads, a ten-year prohibition on holding public office for gross human rights violators, and permanent exclusion of such offenders from the military. In the process of establishing that human rights violations were "part of a deliberate military strategy," the commission went so far as to identify the names of individuals it found to be responsible for the most serious human rights offenses, and then proceeded to set up an Ad Hoc Commission to oversee the purging of those offenders from the military. As a result, one hundred and three military officers were dismissed.

It must be admitted that the army dragged its feet in carrying out the recommendations of the Truth Commission and the Ad Hoc Commission. Nevertheless, the fact that a number of these people were called to account in public and were actually dismissed from their official positions was itself a very important step forward. In addition, it appears that the idea of the Ad Hoc Commission was a creative compromise, given the military's resistance to war crimes trials for military

11. IMPROVISING HISTORY, *supra* note 8, at 14.

personnel. Review commissions of this sort can be effective informal "instruments for change where judicial power is weak or corrupt."¹²

Indeed, the Truth Commission called attention to the lack of a reliable, objective and impartial judicial system. It recommended replacement of the members of the supreme court and called for complete judicial reform, as was recommended in the peace accord.

Despite this impressive record, there were liabilities that need to be mentioned. For one thing, many of the human rights monitors were ill-prepared for their task. There were also special problems of coordination between the Human Rights Center in Geneva and the UN office in New York, which was responsible for peacekeeping.¹³ Lastly, insufficient attention was given to the question of institution building. According to the Lawyers Committee Report,

interviews with ONUSAL members throughout 1994 indicate[d] they were sensitive to the need to reorient the mission away from traditional human rights verification toward technical assistance geared to consolidating the administration of justice and [other forms of institutionalized] human rights protection. Yet it was not until late in the year, as the mission was expected to end, that concrete steps were taken. The failure to give tangible support to the courts, [to the police,] and [to] the Ombudsman can be explained by factors on both the UN and the Salvadoran sides [poor financing, preoccupation with day-to-day activities, etc.] . . . Many mission staff interviewed for this report cite[d] the neglect of institution-building and judicial reform as a lesson to be learned from their experience in El Salvador, and recommend[ed] that these areas be considered a priority in future missions.¹⁴

III. CONCLUSION

The most striking single feature of both cases is this: Violation of human rights is an important source of conflict and compliance with human rights is a crucial foundation for peace.

The recent conflict in the former Yugoslavia illustrates dramatically the first part of this proposition—that human rights violation leads to conflict. At bottom, the four-year war in that region has been about human rights violations of the most deliberate, systematic, and grotesque sort. But beyond that, the peace settlement illustrates the second part as well. Although not UN-arranged, the Dayton Accords explicitly builds in human rights as a basis for peace. Annex 6 of the Accords establishes an elaborate human rights machinery in Bosnia, including a Commission of Human Rights, a Human Rights Ombudsman, and a

12. HUMAN RIGHTS WATCH, *supra* note 1, at 32-33.

13. See IMPROVISING HISTORY, *supra* note 8, at 60 & 61 (calling for extensive "restructuring of the Human Rights Centre" and it is possible the new High Commissioner of Human Rights will attend to this problem, as he promises).

14. *Id.* at 111-112.

Human Rights Chamber for processing human rights claims. Furthermore, the Hague War Crimes Tribunal directly touches the question of accountability for human rights offenses during the war. All these provisions are understood as contributing to the conditions of justice, stability, and peace in Bosnia.

El Salvador also illustrates the truth of both sides of the proposition. Human rights violations were at the center of war, and the extensive attention paid to confronting those violations, and to reforming the institutions that produced or tolerated them was indispensable in building peace in that troubled country.

While events in the former Yugoslavia do not inspire confidence regarding the UN's capacity to protect effectively human rights during and after conflict, the experience in El Salvador goes some way to offset the record of failure. It appears that the UN can be effective under certain conditions. There must be, as there were in El Salvador, parties jointly committed both to the reduction of human rights violations and to UN peacekeeping efforts. There must also be a disposition on the part of the UN to supply adequate staff and resources, and to coordinate carefully its peacekeeping operations.

So long as conditions are "ripe," as they were in El Salvador, and there exists the political and institutional will on the part of the UN, human rights can get secured and promoted during and after times of conflict. However, when the conditions are not propitious, and place a great strain on the capacities of the UN, as in the former Yugoslavia, efforts to protect human rights must be radically rethought.

