The Reykjavik Congress on Human Rights 2013

“Human Rights Protection & International Law: The Multifaceted Dilemma of Restraining and Promoting International Interventions”

(Reykjavik, Iceland, April 10th – 13th, 2013)
Expression of Gratitude:

The Institute for Cultural Diplomacy (ICD) would like to extend its sincere gratitude to all those who dealt with the outreach, planning, organization, and support of the “ICD Annual Conference on Cultural Diplomacy 2012,” who include: Alberto Traval, Alex Hannah, Alix Lang, André Fialho, Andreea Peptine, Anna Oślafiędchuk, Arturs Holavins, Cassia Casagrande, Cassie Yusofi, Christiane Ambrosius, Dante Kotsinas, Denisa Pikusova, Gabriela Šaturová, Georgia Gilson, Giovanni Tonutti, Jens Gronheid, Julia du Pont de Romemont, Kamila Zatorska, Krištíne Buiko, Lindsay Murphy, Magdalena Kozula, Magdalena Bak, Mary Michele Connellan, Nuria Alvarez, Orsolya Kiss, Pilar Rukavina, Piotr Wójcik, Simon Tiemersma, Stephanie Stühler, Umamah Basit and Veronika del Motto.

We would also like to issue a special warmth of gratitude to the Program Directors and Managers of the “ICD Annual Conference on Cultural Diplomacy 2012,” including: Katie Diöckmeyer, Elvira Gonzalez-Valles, William Hernad.

The ICD and the organizers of the “ICD Annual Conference on Cultural Diplomacy 2012,” would further like to thank the participants and speakers of the conference, whose enthusiasm and participation were a vital contribution to the phenomenal success of our event.

Introduction

From the 10-13th of April 2013, the ICD and the Icelandic Ministry of the Interior held the 2013 Congress on Human Rights in Reykjavík, Iceland. This event was held to acknowledge the increasing and persistent cases of mass atrocities and crimes against humanity occurring on a vast scale around the globe. In Reykjavík, leaders in the field of Human Rights were able to argue and debate the notion of responsibility to protect from a human rights perspective whilst taking into account the divergent dimensions in restraining and promoting international involvement in human rights’ crisis.

The Congress on Human Rights 2013 was based primarily at the Ministry of Interior in Reykjavík, whilst also including a number of political, historic, and cultural locations around the city.

The Congress aimed to produce a discussion document that will be presented to the international community on how to overcome the dilemma of restraining and promoting all forms of International Interventions based on coordinated global coalition efforts between governments, NGOs and International Institutions.
The Reykjavik Congress on Human Rights 2013

“Human Rights Protection & International Law: The Multifaceted Dilemma of Restraining and Promoting International Interventions”
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Agenda

The Congress focused on the following major issues: Humanitarian Crisis and The UN Genocide Convention and R2P

Humanitarian Crisis

This section of the conference served as an introduction to the current and most pressing cases of crimes against humanity, considering the role of race and ethnicity throughout. The subjects covered included a focus on escalated mass atrocities during wartime such as in contemporary Mali, the ongoing and systematic violence in Darfur, an analysis of gender based violence as a form of genocide, and finally the international focal point for crimes against humanity such as in Syria.

The UN Genocide Convention and R2P

Following the in-depth discourse on current cases of human rights crisis areas, this section of the conference focused on the ethical dilemma of foreign interventions. The conference aimed to produce an outline of innovative solutions in order to overcome the dilemma of foreign intervention based on coordinated global coalition efforts between governments, NGOs and International Institutions.
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“Human Rights Protection & International Law: The Multifaceted Dilemma of Restraining and Promoting International Interventions”
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Conference Timetable

Thursday, 11th April, 2013

9:00 - 9:30: Conference Opening Venue: Norðurljós, Harpa Concert Hall and Conference Center

9:30 - 9:45: Coffee and Tea

9:45 – 17:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 1: Humanitarian Crises and the "Responsibility to Protect" Doctrine

Chair: Valur Ingimundarson
Professor of History at the University of Iceland
The Complex Relationship between the Responsibility to Protect and the International Criminal Court. Can it Succeed?

Panel 2: The Politics of Human Rights Protection: Gender, Militarism, and Development

Chair: bórdís Ingadóttir, Associate Professor of Law, Reykjavik University
The Responsibility to Protect and the Role of the UN Security Council: The Need for Legitimacy and Consistency

Dr. Erato Kozakou - Marcoulis
Cyprian Politician and former Minister of Foreign Affairs
Humanitarian Crisis: Perspectives and Problems

Venue: University of Bucharest
A Politician’s Perspective on the Enforcement of Human Rights both Nationally and Internationally

John Leslie Prescott, MP
Deputy Prime Minister of the United Kingdom
Dialogues with the President of Iceland, Olafur Ragnar Grimsson, on International Responses to Human Rights Abuses

16:30 - 16:45: Coffee and Tea

16:45 - 17:00 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 3: Mass Atrocities, International Policies, and Post-Conflict Dilemmas

Chair: Cynthia Enloe
Research Professor from the Department of International Development, Community Environment and Women’s Studies, Clark University
The Origins of Genocide and Responsibility to Protect in the 21st Century

Janez Janša, Slovenian politician and former Prime Minister
International Intervention, UN Protecorates, and "Regime Change": The Kosovo Case

Sarah Taylor
Executive Director of the NGO Working Group on Women, Peace and Security (NGOWG)
Women’s Human Rights, Armed Conflict, and International Responsibility: Rhetoric and Practice

17:15 - 17:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 4: Conveying and Protecting Human Rights

Chair: Dr. Erato Kozakou - Marcoulis
Cyprian Politician and former Minister of Foreign Affairs
Transnational Justice, and Conflict Resolution

Valur Ingimundarson
Former Prime Minister of Iceland
Cultural Diplomacy, a Tool for Promoting and Protecting Human Rights

Emil Constantinescu, Associate Professor of International Relations, University of Bucharest
The软 Power of the EU

17:45 - 18:00 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 5: Human Rights Protection: The Role of Global, Political Perspectives and Interests

Chair: Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Ragnar Grímsson, President of Iceland
From the Wars on the Balkans to the Nobel Peace Prize: The Soft Power of the EU

Kína Góncz
Hungarian Member of the European Parliament (MEP)

Friday, 12th April, 2013

9:30 - 11:00: Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 4: Conveying and Protecting Human Rights

Chair: Cynthia Enloe
Research Professor from the Department of International Development, Community Environment and Women’s Studies, Clark University
The Origins of Genocide and Responsibility to Protect in the 21st Century

Janez Janša, Slovenian politician and former Prime Minister
International Intervention, UN Protecorates, and “Regime Change”: The Kosovo Case

Sarah Taylor
Executive Director of the NGO Working Group on Women, Peace and Security (NGOWG)
Women’s Human Rights, Armed Conflict, and International Responsibility: Rhetoric and Practice

11:15 - 12:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Roundtable Discussion: How to Resolve the Tension between Individual Human Rights and Sovereign State Rights: The Role of Global, State, and Individual Actors

Chair: Mark C. Donfried
Director of the Institute for Cultural Diplomacy in Berlin
Promoting International Interventions

Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Sarah Taylor
Executive Director of the NGO Working Group on Women, Peace and Security (NGOWG)
Women’s Human Rights, Armed Conflict, and International Responsibility: Rhetoric and Practice

12:45 - 13:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 5: Human Rights Protection: The Role of Global, Political Perspectives and Interests

Chair: Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Ragnar Grímsson, President of Iceland
From the Wars on the Balkans to the Nobel Peace Prize: The Soft Power of the EU

Kína Góncz
Hungarian Member of the European Parliament (MEP)

13:45 - 15:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 6: Human Rights Protection: The Role of Global, Political Perspectives and Interests

Chair: Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Ragnar Grímsson, President of Iceland
From the Wars on the Balkans to the Nobel Peace Prize: The Soft Power of the EU

Kína Góncz
Hungarian Member of the European Parliament (MEP)

15:45 - 18:00 Venue: Norðurljós, Harpa Concert Hall and Conference Center

The Origins of Genocide and Responsibility to Protect in the 21st Century

Janez Janša, Slovenian politician and former Prime Minister
International Intervention, UN Protecorates, and “Regime Change”: The Kosovo Case

Sarah Taylor
Executive Director of the NGO Working Group on Women, Peace and Security (NGOWG)
Women’s Human Rights, Armed Conflict, and International Responsibility: Rhetoric and Practice

16:00 - 16:15: Coffee and Tea

16:15 - 16:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 7: Human Rights Protection: Gender, Militarism, and Development

Chair: bórdís Ingadóttir, Associate Professor of Law, Reykjavik University
The Responsibility to Protect and the Role of the UN Security Council: The Need for Legitimacy and Consistency

Dr. Erato Kozakou - Marcoulis
Cyprian Politician and former Minister of Foreign Affairs
Humanitarian Crisis: Perspectives and Problems

Venue: University of Bucharest
A Politician’s Perspective on the Enforcement of Human Rights both Nationally and Internationally

John Leslie Prescott, MP
Deputy Prime Minister of the United Kingdom
Dialogues with the President of Iceland, Olafur Ragnar Grimsson, on International Responses to Human Rights Abuses

18:00 - 18:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 8: Mass Atrocities, International Policies, and Post-Conflict Dilemmas

Chair: Cynthia Enloe
Research Professor from the Department of International Development, Community Environment and Women’s Studies, Clark University
The Origins of Genocide and Responsibility to Protect in the 21st Century

Janez Janša, Slovenian politician and former Prime Minister
International Intervention, UN Protecorates, and “Regime Change”: The Kosovo Case

Sarah Taylor
Executive Director of the NGO Working Group on Women, Peace and Security (NGOWG)
Women’s Human Rights, Armed Conflict, and International Responsibility: Rhetoric and Practice

18:45 - 19:00 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 9: Human Rights Protection: The Role of Global, Political Perspectives and Interests

Chair: Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Ragnar Grímsson, President of Iceland
From the Wars on the Balkans to the Nobel Peace Prize: The Soft Power of the EU

Kína Góncz
Hungarian Member of the European Parliament (MEP)

19:15 - 19:30 Venue: Norðurljós, Harpa Concert Hall and Conference Center

Panel 10: Human Rights Protection: The Role of Global, Political Perspectives and Interests

Chair: Franco Frattini
Italian politician and former Foreign Minister of Italy
Responsibility to Protect or Duty to Protect? New Perspectives on UN Humanitarian Interventions

Ragnar Grímsson, President of Iceland
From the Wars on the Balkans to the Nobel Peace Prize: The Soft Power of the EU

Kína Góncz
Hungarian Member of the European Parliament (MEP)

19:45 - 20:00 Venue: Norðurljós, Harpa Concert Hall and Conference Center
The Reykjavik Congress on Human Rights 2013 took place from the 10th to the 13th April 2013, and was hosted by the Icelandic Minister of Interior, lead by Minister Ögmundur Jónasson.

The main focus of the Congress was “Human Rights Protection and International Law: the Multifaceted Dilemma of Restraining and Promoting International Interventions”. The Congress was held at the Harpa Concert Hall and the Ministry of Interior. The event included a wide range of speakers from the field of Politics, Civil Society, and other areas of Academia.

The Conference started with a Reception at the Ministry of Interior of Iceland, were Minister Ögmundur Jónasson welcomed the Speakers to Iceland and to the Conference and announced the program that would follow up in the next days. Minister Jónasson expressed his wishes to have a successful and inspirational conference which, at the same time, introduced speakers and participants to Icelandic culture.

Conference Summary:
The Reykjavic Congress on Human Rights 2013

Following the Speech by Minister Jónasson, the President of the ICD Initiative on the UN Genocide Convention, the Hon. Janez Jansa (former Prime Minister of Slovenia), addressed speakers and participants on behalf of the UN Special Adviser to the Prevention of Genocide:

“For today I just want to transfer the greetings from Mr. Adama Dieng, who is UN Special Adviser on the Prevention of Genocide, who came to Ljubljana yesterday, for the first meeting of high representatives from across Europe which are working now on this new concept that was started in the United Nations in 2005 and is called “Responsibility to Protect (R2P). So far Europe has been lagging behind but some European countries were involved in a meeting; now things are changing, as I said yesterday was the first meeting for this focal points of this project. In this occasion, when I told Mr Dieng that I will travel to Reykjavik for this Conference, he asked me to transfer his best wishes and regards to all the participants. He said that he is totally aware that, without the support from the civil society and universities, this initiative and all his work and all the efforts that United Nations are investing to stop genocide and other mass atrocities has not a chance to succeed. So he is aware that this conference is a very important contribution and continuation of the work in this issue. Mr Dieng promised me that he will consider if we send him all the papers and speeches from this conference, preparing a special report in this year for the Secretary General. It will focus specifically on civil society, a topic which was more or less neglected over the last years.”
The Reykjavik Congress on Human Rights 2013
“Human Rights Protection & International Law: The Multifaceted Dilemma of Restraining and Promoting International Interventions”
(Reykjavik, Iceland, April 10th – 13th, 2013)

Speakers at the Reykjavik Congress on Human Rights 2013

Ólafur Ragnar Grímsson, President of Iceland
Ogmundur Jónasson, Icelandic Minister of the Interior
The Hon. Jarek Janis, former Prime Minister of Slovenia
President Emil Constantinescu, President of the Academy for Cultural Diplomacy
The Hon. Vesna Medenica, President of the Supreme Court of Montenegro
Dr. Erato Kozakou - Marcoullis, former Minister of Foreign Affairs
The Hon. John Leslie Prescott, former Deputy Prime Minister of the UK
Cynthia Enloe, Research Professor at Clark University
The Hon. Franco Frattini, former Foreign Minister of Italy
The Hon. Mani Shankar Aiyar, former Indian Minister for Petroleum
The Hon. Kinga Göncz, Hungarian member of the European Parliament (EP)
Þórdís Ingadóttir, Associate Professor of Law, Reykjavik University
Minister Urmas Paet, Foreign Minister of Estonia
Sarah Taylor, Exec. Dir. of the NGO Working Group on Women, Peace & Security
Mark Donfried, Director & founder of the ICD
Vuks Ingimundarson, Professor of History at the University of Iceland

Reykjavik, Iceland; April 10th - 13th, 2013
Lectures at the Harpa Concert Hall
Thursday, April 11th, 2013

The Conference was opened by Ögumunur Jónasson, Icelandic Minister of Interior, who gave a lecture on ‘Confronting Mass Atrocities: International Responsibilities and Human Rights Protection’. This was followed by a speech from Mark C. Donfried, who spoke about ‘Cultural Diplomacy, Transnational Justice, and Conflict Resolution’ at the Norðurljós, Harpa Concert Hall and Conference Center. The Conference addressed the issues of the Humanitarian Crisis and Responsibility to Protect (R2P), with speakers from the first panel discussion, chaired by Prof. Valur Ingimundarson. Prominent speakers included Urmas Paet, Foreign Minister of Estonia, Vesna Medenica, President of the Supreme Court of Montenegro and John Leslie Prescott, Politician and former Deputy Prime Minister of The United Kingdom.

Humanitarian Crises and the “Responsibility to Protect” Doctrine

In the afternoon, a second panel took place which was aimed at discussing the Politics of Human Rights Protection, including the topics of Gender, Militarism and Development. This was chaired by Þórdís Ingadóttir. The rest of the afternoon, included talks given by Research Prof. Cynthia Enloe, from the Department of International Development, Community and Women's Studies of Clark University, Sarah Taylor, Executive Director of the NGO Working Group on Women, Peace, and Security. Mani Shankar, Indian Politician and Indian Minister for Petroleum, honoured the ICD with her reflections on Human Rights in the field of development, focusing particularly on the case of India and Tribal activities.

The third Panel took place from 16:15 under the topic ‘Mass Atrocities, International Policies, and Post – Conflict Dilemmas, chaired by Cynthia Enloe. The ICD was also privileged to have lectures from the former Slovenian Prime Minister Janez Janša, and Valur Ingimundarson who is Prof. of Contemporary History at the University of Iceland.

The final speech of the day was undertaken by Þórdís Ingadóttir, Associate Prof. of Law at Reykjavik University. This provided participants with reflections on the role of legal institutions, in prosecuting crimes such as Human Rights abuses.

The Politics of Human Rights Protection: Gender, Militarism, and Development
Lectures at the Harpa Concert Hall

Thursday, April 12th, 2013

Friday April 12th saw the fourth panel discussion taking place first thing in the morning at the Norðurljós, Harpa Concert Hall and Conference Center, under the title ‘Conveying and Enforcing Human Rights Protection Cultural and Political Perspective’. This was followed by very informative speeches from Emil Constantinescu, Prof. At the University of Bucharest and former President of Romania, and Kinga Göncz, Hungarian member of the European Parliament (EP).

One of the most thought provoking speeches came from the Italian Politician and former Foreign Minister of Italy, Franco Frattini, who challenged traditional thinking on the concept of Responsibility to Protect. He provided new perspectives on UN Humanitarian Interventions, and posed the controversial question of whether the international community has a duty, rather than a responsibility, to intervene. The participants and speakers were also given the opportunity to participate in a visit to the Icelandic Parliament followed by an excursion.

The last event of the Conference, held on Friday afternoon at the Norðurljós, Harpa Concert Hall and Conference Center, was the Roundtable Discussion: How to Resolve the Tension between Individual Human Rights and Sovereign State Rights: The Role of Global, State, and Individual Actors, chaired my Mark C. Donfried. This was attended by Francisco Frattini, Sarah Taylor and Dr. Erato Kozaku – Marcoulis, Cypriot Politician and former Minister of Foreign Affairs and Mani Shankar. The round table addressed some of the most prominent issues in the field and also provided the opportunity for participants to contribute their own reflections.

Roundtable Discussion: How to Resolve the Tension between Individual Human Rights and Sovereign State Rights: The Role of Global, State, and Individual Actors
Dialogue with the President of Iceland, Ólafur Ragnar Grímsson
“International Responses to Human Rights Abuses”

During the first day of the Congress, speakers and participants met with President of Iceland Ólafur Ragnar Grímsson to discuss International Responses to Human Rights Abuse. The meeting was an opportunity for speakers, participants, Members of the Icelandic Ministry of Interior and ICD Staff members to discuss many of the issues that were exposed during the conference, and to enjoy open dialogue with President Ragnar Grímsson during the lunch at the Icelandic Presidential House.
Human Rights Protection & International Law: The Dilemma of Restraining and Promoting International Interventions

Ladies and Gentlemen:

It is a pleasure to welcome you to the Reykjavik Human Rights Congress—sponsored jointly by the Icelandic Ministry of the Interior and the Institute of Cultural Diplomacy in Berlin in collaboration with Edda, Center of Excellence at the University of Iceland—on international responsibility to preserve human rights and to respond to mass atrocities. We have invited a diverse group of distinguished current and former politicians, judicial and NGO representatives, and academics to discuss the dilemma facing the „international community” in cases of conflicts, involving grave human rights violations, and the applicability of legal instruments and political norms, such as the UN Genocide Convention and „the Responsibility to Protect” doctrine, to stop war crimes, crimes against humanity, and genocides.

There will be references here to both historical and contemporary examples of such conflicts—in places such as Rwanda, Cambodia, Palestine, the former Yugoslavia, Congo, Libya, and Syria—and the consequences of ethnic cleansing, mass killings and rapes. The question is not about a lack of knowledge about such atrocities, but about how to ensure that they are not committed in the first place. The focus here will not only be on the geopolitical, legal, and ethical problems of interventions or the tensions between sovereign state rights and individual human rights. We will also explore the impact of conflicts on gender and social groups, post-conflict reconstruction, and transitional justice processes. Similarly, we will explore the role of interveners, whether soldiers or peacekeepers, whose conduct often has decisive influence on the development of conflicts and post-conflict politics. In short, we want to address the topic from a wide range of political, legal, gendered, social, and cultural perspectives. For an engagement with core questions involved here is needed to find ways to act more responsibly, as individual citizens and as members of a global or collective community, towards those who are in danger of being victimized as a result of extreme systematic violence.

The 2005 UN initiative on the Responsibility to Protect, which was rooted in the failure of the „international community” to stop the Rwandan genocide, was based on the notion that sovereignty is not a right but a responsibility. It is based on three principles:

1. That a state has a responsibility to protect its population from mass atrocities;
2. That the „international community” has a responsibility to assist the state to fulfill its primary responsibility;
3. That if the state fails to protect its citizens from mass atrocities, the international community has the responsibility to intervene through coercive measures such as economic sanctions or military intervention as a last resort.

The „Responsibility to Protect” idea is what has been termed an emerging, if contested, norm, and it is not coded in international law. When it comes to implementation, the instruments are embedded in existing UN Security Council mechanisms, such as the UN Genocide Convention, mediation, economic sanctions, and war making power in the case
of “the existence of any threat to peace, to breach of the peace, or act of aggression,” as it is put in Chapter 7 of the UN Charter. Thus, the authority to use force or engage in intervention rests solely with the UN Security Council and the General Assembly. And it is here that there is no consensus on how to interpret or enforce the norm provided for in Responsibility to Protect. The current deadlock in the Security Council on the Syrian crisis exposes the crux of the dilemma when acute humanitarian concerns clash with geopolitical interests.

Our discussion at this conference will take account of various approaches to political action geared toward the upholding of the principle of human rights. For one thing, we need a clearer definition of situations, where populations face mass atrocities. This will, admittedly, not be easy, because each conflict has different dynamics, depending on its nature, geography, proximity to—and interests of—other stakeholding countries. Moreover, the history of interventions for humanitarian purposes has been decidedly mixed. Such scenarios have, therefore, to be treated with extreme care, because they could undermine existing international legal codes protecting civilian populations. Nonetheless, such questions cannot be evaporated for they are existential for those affected—the victims.

According to the UN Genocide Convention, genocide is defined as an intent to destroy certain specified types of groups, underscoring the notion of dual victimhood: both the person killed as well as the group. The idea was that those who commit genocide challenge the universality of human identity as a fundamental right. It was coupled with a desire to establish a permanent international court to punish the perpetrators of atrocities. The project, however, quickly became a casualty of the Cold War, with the main antagonists unable to agree on a mandate for such a court. Indeed, a permanent international judicial body, the International Criminal Court, did not become a reality until half a century later.

In other words, the UN absolved itself from any responsibility in the realm of prevention and punishment. Decades passed without any international trials of war criminals and those guilty of taking part in genocides. It was not until the 1990s, when the UN Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) and its counterpart in Rwanda (ICTR) that the Genocide Convention was revived as an instrument of international justice. And the first time that the 1948 law was enforced was with the 1998 genocide convictions of Rwandan political leaders. Consistent with the ex-Yugoslavia and Rwanda precedents, special courts were subsequently established for Sierra Leone and Cambodia. This phase of rapid expansion was characterized by a focus on questions of institution building and by a willingness to reapply the Nuremberg principles in court. Accountability in the form of punishment was seen as being crucial to prevention, as former UN Secretary General, Kofi Annan, emphasized in his Action Plan to Prevent Genocide.

Yet, politically and legally, the justification for preventing or halting atrocities and punishing those responsible for them has not been sought in a broader definition of genocide or by amending the Genocide Convention. Rather, the goal has been pursued through an expanded understanding of the term “Crimes against Humanity,” which was first used in the postwar Nuremberg Trials. This term now includes crimes that were originally absent from it, such as rape, apartheid, enforced disappearance, torture, and imprisonment or any of a series of acts “committed as part of a widespread or systematic attack directed at any civilian population, with knowledge of the attack.” Unlike genocidal crimes, no special or discriminatory intent is required in cases of crimes against humanity, which has given the UN or other international or regional organizations more leeway to respond to mass crimes.

Those who have criticized trials as a failed instrument to prevent massive human rights abuses may, arguably, sometimes have gone too far in the other direction by proposing and praising amnesties—granted to perpetrators in the name of societal reconciliation—as an alternative. It can hardly be considered just to reward criminals and keep them in power for the sole purpose of achieving political stabilization. And even if international criminal prosecutions may have limited impact on ongoing conflicts, their long-term effects may be considerably greater. Trials offer ways to respond to past violence and to legitimize the rule of law.

One of the goals of the International Criminal Court, which came into being in 2002, is to overcome such hurdles. The court is intended to be a form of justice of last resort, investigating and prosecuting where domestic courts have failed. True, it can only prosecute crimes committed since its inception and its mandate is restricted. Many of the member states have provided their own national courts with universal jurisdiction over the same offenses and do not recognize any statute of limitation for grave crimes such as genocides. More important, some Great Powers do not recognize the jurisdiction of the court, such as the United States, China, and India, undermining its authority and claim of universality. Yet, the Court, with 121 states being party to it, has opened important investigations into war crimes in several African states, such as Congo, Uganda, Darfur, and Kenya. In some instances, the cases were referred to the Court by the concerned states themselves and in others by the UN Security Council. Irrespective of whether the Court has a deterrent value, it offers one way of meting out justice.

Responding to mass atrocity with legal prosecution reflects an effort to embrace the rule of law and to offer some justice to victims. The success of such trials should be measured not by the number of prosecutions or convictions, but whether they are fair or not. Political stability and reconciliation are not among the goals of trials. To be sure, as Martha Minow has pointed out, trials transfer individuals’ desires for vengeance to state or official bodies and “cool vengeance into retribution.” Yet, they do not offer forgiveness or apologies to victims since their focus is on the perpetrators. For these reasons, other ways are also needed to deal with the consequences of mass crimes, such as the question of restorative justice as opposed to retributive justice within the context of what has been termed “transitional justice”—that is, the political and legal processes characterizing the transition from authoritarian rule to democracy.

Thus, it is not enough to punish perpetrators; victims also have a moral right to know the truth about past misdeeds and to have their concerns addressed. Truth commissions, reparations, apologies, and truth reports have traditionally been seen as vehicles to deal with such issues. Their focus is less on individuals and more on communities and nation-states; they seek to uncover facts, identify perpetrators and assign responsibility as part of the process of confronting the past and of building new relationships between citizens and the state. They are severed from prosecutions, avoid vengeance, and even retribution, even if they can recommend legal action against perpetrators. Truth commissions fail to create potential closures afforded by trials that end in punishment. They do not order victims to forgive perpetrators, for individuals, not states, are the only ones capable of doing so. And they should, of course, not be used as mechanism to avoid trials, as some perpetrators want.

The South African Truth Reconciliation Commission (TRC), grappling with the legacy of Apartheid, had the authority to grant amnesty to individuals who voluntarily accepted responsibility for committing politically motivated crimes. Like the courts, the TRC pronounced guilt and innocence, but did not dispense forgiveness. And the dispensing of amnesty did not require a show of remorse from those indemnified. The downside of the restorative process in South Africa was, as many victims stressed, the deprivation of the right to seek justice through criminal or even civil prosecution.
Much can be made for the case of combining retributive and restorative justice. Indeed, one of the innovations of the Statute of the International Criminal Court is the series of rights granted to victims. Victims have the possibility to present their views and observations before the Court, offering a balance between the trial’s focus on perpetrators, on the one hand, and the victims, who gain increased authority through their participation, on the other. The deterrent value of war crimes trials may be uncertain—and their selectivity is an example of flawed justice—but we should not forget that despite state-sponsored obstructionism and delays, major perpetrators in the Rwandan, Yugoslavian, and Cambodian cases eventually ended up in court. For the victims, it is a sign that their suffering has not been without consequence.

I would like to end this talk by thanking all those who have helped make this conference possible by contributing to its organization and by taking part in it. I want to express my special thanks to Mark C. Donfried, the Executive Director of the Institute for Cultural Diplomacy, whose initiatives on the “Convention on the Prevention and Punishment of the Crime of Genocide” and the “Responsibility to Protect doctrine,” played an important role in conceiving the agenda of this conference.

I would also like to thank Valur Ingimundarson, professor at the University of Iceland, who not only has helped organize this conference, but has also been a source of knowledge and inspiration for me personally, introducing me to the academic dimension of this important topic. It should be said that many of the distinguished former politicians taking part in this conference have direct experience in dealing with crisis situations, involving mass atrocities. Their interventions should be especially valuable in understanding the nature of conflicts and in discussing ways to respond to them. I, thus, sincerely hope that our audience will be able to act as a spokesman for the right to declare ownership over their own lives and culture.”

Thank you

Ögmundur Jonásson
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