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Author(s)	Toshiaki, Komatsuzaki
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Peace, Justice and Reconciliation through the Protection of Human Rights: A Preliminary Note

Toshiaki Komatsuzaki

1. Introduction

Since the collapse of the Cold War system, issues on human rights have come to the fore in a wide range of areas and have turned into major agenda item in international relations as ever before.⁽¹⁾ For example, the 1993 Vienna Declaration and Programme of Action emphasized that “the promotion and protection of human rights is a matter of priority for the international community.”⁽²⁾ In particular, such a trend is markedly observed in a current effort to set up an international jurisdiction concerning serious violations of human rights in armed conflict. This was inspired by the atrocities committed in the course of the wars in the former Yugoslavia and by the Rwandan genocide in the first half of 1990s.

In July 1998, the Rome Statute establishing the International Criminal Court was adopted at the United Nations Diplomatic Conference of Plenipotentiaries. More than 160 states sent delegates to this conference, and 120 of them voted for the Statute, 7 against and 21 abstained.⁽³⁾ The establishment of the International Criminal Court (ICC) has been often described as a culmination of the history of human rights development since the Second World War.⁽⁴⁾ A major motivation behind it was the desire for a permanent body capable of dealing with grave breaches of human rights rules which “deeply shock the conscience of humanity”⁽⁵⁾ such as those committed in Rwanda, the former Yugoslavia, Sierra Leone, East

Timor, Cambodia, Iraq and so on.⁽⁶⁾ Serious violations of human rights rules and norms—including international humanitarian law such as the 1949 Geneva Conventions—are now seen as threats to the “peace and security and well-being of the world.”⁽⁷⁾ That the serious violation of human rights constitutes a threat to international peace and security has been repeatedly reaffirmed in the UN Security Council resolutions concerning the incidents in the former Yugoslavia and in Rwanda.⁽⁸⁾ In these resolutions, the Security Council determined that the situations in the former Yugoslavia or in Rwanda where widespread violations of international humanitarian law including mass killings and ethnic cleansing have occurred constitute a “threat to international peace and security.”

One commentator notes that “[s]everal landmark events . . . indicate an emerging consensus on the need to put an end to impunity for international crimes.”⁽⁹⁾ Respect for human rights is, in other words, an unavoidable tide in the contemporary world, and no state can readily ignore the rules and norms.⁽¹⁰⁾ Among others, massive human rights atrocities committed in the former Yugoslavia and Rwanda and the following establishments of ad hoc international criminal tribunals dealing with these atrocities had a significant impact on international politics and came to be precedents for similar attempts such as in Sierra Leone, Cambodia and East Timor.

Why has the international community moved to adopt an institution of international criminal justice to respond to human rights atrocities, and what kind of role it can play in restoring peace in post-conflict societies? This paper will discuss the theoretical implications of international criminal justice system in a broad sense with regard to the debates on human rights protections and peace-building after conflicts.

2. Human Rights Law and State Sovereignty

The concept of human rights has so wide a range of meaning that

there is no philosophical consensus on the content of the term of human rights.⁽¹¹⁾ In principle, the concept of human rights stems from care for humanity,⁽¹²⁾ and is recognized in a variety of international agreements as one of several fundamental values for the contemporary international community. For example, the preamble to the 1948 Universal Declaration of Human Rights states that, in the first place, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”⁽¹³⁾ Donnelly describes that “[w]e have human rights not to what we need for health but to what we need for a life of dignity.”⁽¹⁴⁾ Freedden defines human rights as follows: “a human right is a conceptual device, expressed in linguistic form, that assigns propriety to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.”⁽¹⁵⁾ From a political point of view, as seen in Freedden’s definition above, human rights are moral and legal instruments for people to claim for human dignity against their own states. Donnelly also states that human rights are “the social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets”⁽¹⁶⁾ and also “setting universal criteria of political legitimacy.”⁽¹⁷⁾

It seems to be useful here to see a brief history of international documents on human rights, which would tell us how people have tried to crysterize care for humanity and the “conscience of humanity”⁽¹⁸⁾ and create a more “humane” world order. In the modern world, the codification of the concept of human rights at the international level began in the nineteenth century with concern for slavery, the treatment of sick and wounded soldiers and prisoners of war, the treatment of aliens, the condition for workers, and so forth.⁽¹⁹⁾ With the end of the First World War, the Covenant of the League of Nations, which was stipulated as Part I of the Treaty of Versailles, included provisions based on care for humanity: calling the member states for making a “fair and humane conditions of labour for

men, women and children”⁽²⁰⁾ and securing “just treatment of the native inhabitants of territories under their control.”⁽²¹⁾

After the Second World War, many frameworks of human rights rules were set up under the United Nations system. First, the Charter of the United Nations sets forth as one of its purposes of an achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.⁽²²⁾ All member states of the United Nations are required to take action in order to achieve this purpose.⁽²³⁾ Second, based on the human rights values expressed in the Charter, the UN General Assembly adopted the Universal Declaration of Human Rights in 1948. Later in 1966, two human rights conventions were concluded in order to bring the idea embodied in the earlier Declaration into legally binding rules: namely, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.⁽²⁴⁾ In order to secure the state compliance with these treaties, they established implementation and enforcement mechanisms. Subsequently, the international community has concluded a number of international treaties and conventions whose fundamental values were derived from the Declaration and aimed at complementing two Conventions. Since it is not within the scope of this paper to look into every convention, suffice it here to refer that the Convention on the Prevention and Punishment of the Crime of Genocide was signed in 1948 and states that “genocide, whether committed in time of peace or in time of war, is a crime under international law.”⁽²⁵⁾ Third, it should be briefly noted that international humanitarian law, or the law of war, which would be applied in the time of war or armed conflict, has also developed: namely, the Hague and Geneva Conventions. Although it is acknowledged that international humanitarian law categorically on the distinct lineage from human rights norms which are to be applied in the “time of peace,” it is obviously another process of codifying care for humanity.

The international community has made many attempts to implement

these human rights and humanitarian rules onto societies, and created many organs in the UN system in charge of their implementations. For example, the UN Economic and Social Council (ECOSOC) and its subsidiary commissions and committees have issued numerous reports, recommendations, and draft conventions on human rights for the UN General Assembly. Furthermore, most treaties and conventions mostly require state parties to take certain measures in order to implement provisions, and also establish a certain system of monitoring them.⁽²⁶⁾ The Commission on Human Rights and its sub-commission have, among others, been authorized to examine information, study situations and take action with respect to complaints about human rights violations.⁽²⁷⁾ However, the competences of these implementing and monitoring bodies are profoundly limited: no more than requiring states parties to take certain measures, to make periodical reports, or proclaiming their violations of conventions. Besides, although there are many reasons which hinder effective implementation of human rights provisions, one of main difficulties comes from the fact that human rights are, as defined above, political devices to regulate the relationship between individuals and state power. This leads to the premise that the issue of human rights has been primarily seen as a subject falling within the domestic jurisdiction of each sovereign state, where other political authorities are required to refrain from interfering in internal affairs.⁽²⁸⁾

This is a logical consequence derived from the principles of the sovereign quality of all states and of non-intervention affirmed in the UN Charter⁽²⁹⁾ and other international documents.⁽³⁰⁾ Moreover, in some cases, states could take measures derogating from their obligation under the convention in time of public emergency.⁽³¹⁾ MacKinnon states that this is a “formal excuse from compliance.”⁽³²⁾ As often discussed concerning the issue of humanitarian intervention after the Cold War, especially in the case of Kosovo, there is considerable tension between protecting human rights and respecting conventional principles of international law.⁽³³⁾ It is widely argued among scholars of international law that the concepts

of sovereignty and non-intervention under international law have been “subject to a process of reinterpretation in the human rights field [. . .] so that states may no longer plead this rule as a bar to international concern and consideration of internal human rights situations.”⁽³⁴⁾ However, this is not definitive and is still open to dispute.⁽³⁵⁾ One of the initial motivations of the creation of international tribunals is to put an end to impunity for those who responsible for serious violations of human rights, if not all cases.⁽³⁶⁾

Therefore, although having made great contributions to the development of human rights protection, the existing human rights protection system is, on the whole, unable to deal adequately and effectively with violations of human rights in the contemporary world, and much less to punish those who responsible for the abuses and bring people to accommodation.⁽³⁷⁾

3. International Criminal Tribunals

The current effort to create ad hoc international criminal tribunals aims at overcoming the insufficiency of existing human rights protection mechanisms. It is also one way to achieve transitional justice in post-conflict societies.⁽³⁸⁾ There are two types of such tribunals: (i) international criminal tribunal (the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) which were established by the UN Security Council acting under Chapter VII of its Charter), and (ii) special panels within the domestic judicial system (so-called “internationalized” or “hybrid” courts, tribunals and panels created in Kosovo, Sierra Leone, East Timor and Cambodia).

The creation of two ad hoc international criminal tribunals in the middle of the 1990s—namely the ICTY and the ICTR—is the first attempt, since the Nuremberg and Tokyo trials, to conduct judicial proceedings at an international court against individual perpetrators of international crimes during the war by invoking a newly devised concept of ‘crimes

against humanity' and the conventional category of war crimes. Moreover, these two tribunals have been recognized as models for subsequent similar institutions. However, there is much criticism concerning the establishment of the ICTY, a prototype of subsequent ad hoc tribunals. The principal objections can be categorized into three points: (i) the Tribunal was established to make up for the impotence of diplomacy and politics, illustrated the inability of the international community to find a swift and proper solutions to the conflict; (ii) by establishing the Tribunal the Security Council exceeded its powers conferred by the UN Charter, adopting an act that was apparently ultra vires; (iii) in creating a criminal court dealing only with crimes allegedly committed in a particular region, the Security Council opted for 'selective justice.'⁽³⁹⁾ As to the second point, what is important here is not whether the Security Council is authorized to exercise a certain power that is apparently based on the controversial principle of implied power, but the fact itself that the Security Council acting under Chapter VII determined that human rights atrocities in the former Yugoslavia constituted a threat to international peace and security and decided to establish a judicial organ in order to halt further atrocities and hold perpetrators to account. To be sure, the Security Council's decision to address the devastating situation by establishing a judicial institution was a political decision and such a policy option was not envisaged when the United Nations was created. However, it can be argued that the decision represents a new development in an attempt to respond more effectively to human rights atrocities. As Rachel Kerr points out, it is "the clearest recognition . . . of the explicit inter-relationship of law and politics to serve a common goal,"⁽⁴⁰⁾ because, while "[t]he tribunal was created as a judicial body to carry out a purely judicial function, [i]ts purpose . . . as a measure for the restoration and maintenance of international peace and security is essentially political."⁽⁴¹⁾

The ICTY and the ICTR are created in different situations from a court in a domestic system and even separated from the International Court of Justice. The success of their operations hinge on the highly uncertain

political contexts: such as funds on the UN General Assembly and the supports from states and the Security Council with respect to putting pressure on states to comply with its decisions.⁽⁴²⁾ There is an argument as to whether this form of international response to the conflict is appropriate and effective for the purpose of the restoration and maintenance of international peace and security. David Scheffer suggests that international judicial intervention could be the “shiny new hammer” for the international community to respond to certain types of emergencies in which fundamental human rights are at stake.⁽⁴³⁾ The prevailing view is, however, that the establishment of judicial organs was a substitute for forceful interventions, stemming from international public pressure that “something has to be done.”⁽⁴⁴⁾ In that sense, it is hardly the best policy option, but may be much better than doing nothing or intervening with armed forces.

The ad hoc Tribunals have imposed upon them two different obligations: to law and to politics.⁽⁴⁵⁾ They are inherently political or selective by virtue of their method of establishment even if they are legitimate judicial bodies.⁽⁴⁶⁾ Here arises the issue of the function and role of judicial system in disputes in which political factors are deeply entwined. Kerr illustrates that “where [these obligations] are conflictual, which takes precedence? If the pursuit of justice is detrimental to the pursuit of peace in the short-term, should not the pursuit of peace prevail, since it is the primary object of the Tribunal as an institution?”⁽⁴⁷⁾

As to the conflict between justice and peace, there is another argument about the notion of international justice. William Pfaff criticizes that the ad hoc tribunals are based on the Western legal and moral tradition, and have legitimacy as long as all parties concerned share the ‘common-sense’ for ‘specific justice.’ He argues that the ICTY and the ICTR

have had two major accomplishments: they administer ‘international’ justice and not victor’s justice; and they have established in practice their right to indict and try individuals despite the national character of the crimes and those individuals’ formal subjection to

national sovereignties. These are major steps towards the ideal of international jurisdiction and justice in matters of crimes against humanity and war crime. These accomplishments are nonetheless limited since they rest on an international consensus which could prove ephemeral.⁽⁴⁸⁾

He admits, on the other hand, that they might accomplish significant achievements in the field of international law.

If the existing tribunals do not administer 'victor's justice', they nonetheless administer justice as defined by the Western European democracies and by Western legal and moral traditions. They are effectively functioning within the existing framework of international law and conventions which attempt to limit war, and prevent or contain international conflict. This is a significant achievement.⁽⁴⁹⁾

Therefore, generally speaking, it might generate a body of jurisprudence that would continue to build over time and influence the development of international law in relation to international politics.⁽⁵⁰⁾ However, the application of Western or "international" rules and norms to non-Western cases is still a contentious issue. For example, during the negotiation with the United Nations, the Cambodian government rejected a recommendation presented by the UN Group of Experts for Cambodia that the United Nations establish an ad hoc international tribunal, like in the former Yugoslavia and Rwanda, to respond to the atrocities committed by the Khmer Rouge leadership.⁽⁵¹⁾ The recommendation was based on a conclusion made by the Group of Experts after its investigation in Cambodia that the Cambodian judiciary lacked key elements for fair and effective trials.⁽⁵²⁾ The reason for Cambodia's rejection is that the Report of the Group of Experts in which the recommendation was made does not "take account of Cambodia's need for peace and national reconciliation."⁽⁵³⁾ The government also cautioned that, "if improperly conducted, the trials

of Khmer Rouge leaders would create panic among other former Khmer Rouge officials and rank and file and lead to a renewed guerrilla war.”⁽⁵⁴⁾ Faced with the rejection, the United Nations eventually agreed to create a “hybrid” tribunal composed of international and local judges and applying international and local rules.⁽⁵⁵⁾ Consequently, while establishing a judicial institution is one of several valuable policy options for responding to human rights atrocities, there are many obstacles to it.

4. Truth and Reconciliation Commissions

It should be noted that there is another effort to resolve the contradiction between justice and peace, and also fulfil international standards, a local need for peace and reconciliation, and the pursuit of political goals and legal requirements by establishing a quasi-judicial institution such as a truth and reconciliation commission. Well-known examples of such an effort are commissions established in South Africa, Chile, Argentina, El Salvador, Honduras, Uruguay, and Rwanda.

The general purpose of truth and reconciliation commissions is “to reveal the truth about the past and to serve as a mechanism for establishing justice.”⁽⁵⁶⁾ The advantages of such an institution are illustrated by Cassese. He points out that it could

- (i) further understanding in lieu of vengeance, reparation in lieu of retaliation, and reconciliation instead of victimization; (ii) promote a kind of historical catharsis, through public exposure of crimes; (iii) delve into the historical, social, and political roots of the crimes; (iv) establish a historical record of the atrocities committed; and (v) prevent or render superfluous long trials against thousands of alleged perpetrators.⁽⁵⁷⁾

It is regarded as one of several effective policy options for responding to

human rights atrocities and restoring peace, aiming to bring justice and peace into harmony, particularly “when the former government is still strong and any major trial for all the persons who orchestrated or ordered atrocities would be likely to jeopardize the stability and viability of the new democratic government.”⁽⁵⁸⁾

In the Asian context, a commission established in East Timor after its independence from Indonesia is a notable example. In July 2001, the United Nations Transition Authority in East Timor (UNTAET) established the Commission for Reception, Truth and Reconciliation in East Timor (CAVR in its Portuguese acronym).⁽⁵⁹⁾ It was originally proposed by East Timorese NGOs in a workshop of the National Council of Timorese Resistance in June 2000 and subsequently organized in detail with the cooperation of United Nations High Commissioner for Refugees (UNHCR), the UNTAET Human Rights Unit, and other international experts.⁽⁶⁰⁾ Its main objective is to promote national reconciliation by establishing the truth regarding past human rights violations committed in East Timor between 25 April 1974 and 25 October 1999.⁽⁶¹⁾

There is a fundamental division of labour between the CAVR and other formal judicial bodies such as the Serious Crimes Panels⁽⁶²⁾ and the Office of the General Prosecutor (OGP). It is expected that, while the formal judicial bodies are responsible for prosecuting perpetrators of serious human rights violation categorized as ‘serious crimes’ such as war crimes, crimes against humanity, rape, and torture, the CAVR deals with ‘less serious’ crimes such as looting, burning and minor assault.⁽⁶³⁾ However, one of outstanding characteristics of the CAVR process—Community Reconciliation Process—is its strong connection with the formal judicial process. In the course of Community Reconciliation Process, the CAVR should send to the OGP a written statement submitted by a person who is responsible for the commission of atrocities and wishes to participate in a Community Reconciliation Process, and the OGP will decide whether it exercises jurisdiction over his/her acts in the case that they constitute serious criminal offences.⁽⁶⁴⁾ To be sure, it seems to be a considerable risk for a deponent⁽⁶⁵⁾

to come forward, but the CAVR's final report shows that it received over 1,500 statements in its four-year operation.⁽⁶⁶⁾ Although it needs a little more time to judge the success of the CAVR's work, it contributed to reveal the truth of human rights atrocities in East Timor between 1974 and 1999 which includes information on serious criminal offences.⁽⁶⁷⁾ Whether the Community Reconciliation Process and the 'truth' established in the process lead to true reconciliation among people in East Timor and Indonesia is another question which requires further investigation and analysis. Nevertheless, as one commentator noted, "it is fair to argue that the process was not only a Community-based Reconciliation Process, but it was indeed a Community-based Justice and Reconciliation Process" and it contributed "not only to the reconciliation process . . . but also to the formal justice system."⁽⁶⁸⁾

5. Concluding Remarks

Reconciliation processes do not necessarily result in forestalling further atrocities and building a more peaceful community, as justice does not always lead to reconciliation. Nonetheless, as Ramsbotham et al. have pointed out regarding the South African case, a truth and reconciliation commission "offers a magnificent and hopeful example of a creative attempt to handle the past in a way that furthers societal reconciliation in the present and promotes conflict resolution into the future."⁽⁶⁹⁾ However, the relationship between peace, justice and reconciliation is so complicated, and there is no 'one-size-fit-all' model. In addition, as Cambodian and East Timorese cases clearly show, there is a serious contradiction between international efforts to achieve the protection of human rights and strong resistance from local governments. Nevertheless, as the East Timorese and Cambodia cases also show, the international community and local communities suffered from the past human rights atrocities have sought a way to achieve reconciliation and restore a public order based on the rule

of law through judicial and quasi-judicial mechanisms.

Notes

- (1) See Hughes, Caroline, "Writing Human Rights in the 21st Century," *International Politics* 39, March 2002, pp. 91-100, at p. 91.
- (2) *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights held from 14 to 25 June 1993 (A/CONF.157/23, 12 July 1993). For a list of internationally recognized human rights, see Donnelly, Jack, *International Human Rights: Dilemmas in World Politics*, Second edition, Boulder and Oxford: Westview Press, 1998, p. 74.
- (3) *United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome 15-17 July 1998: Official Records, Volume II—Summary records of the plenary meetings and of the Committee of the Whole*, New York: United Nations, 2002, p. 121.
- (4) Geoffrey Robertson argues that the establishment of the ICC is one of six unprecedented events which bring about the "revival and refinement of the Nuremberg legacy" through their "cumulative impact" on international society (Robertson, Geoffrey, QC, *Crimes against Humanity: The Struggle for Global Justice*, New edition, London: Penguin Books, 2002, pp. xxv-xxvi). See also Smith, Thomas W., "Moral Hazard and Humanitarian Law: The International Criminal Court and the Limitation of Legalism," *International Politics* 39, June 2002, pp. 175-192, at p. 176.
- (5) Preamble to the ICC Statute (A/CONF. 183/9, 17 July 1998).
- (6) See Popovski, Vesselin, "International Criminal Court: A Necessary Step towards Global Justice," *Security Dialogue* 31(4), December 2000, pp. 405-419, at p. 409.
- (7) Preamble to the ICC Statute.
- (8) See, for example, S/RES/808 (1993), S/RES/827 (1993), S/RES/955 (1994).
- (9) Popovski, "International Criminal Court," p. 405.
- (10) It is often argued that rules and norms for protecting human rights have now become *jus cogens* or a peremptory from which no derogation is permitted.
- (11) Donnelly, *International Human Rights*, pp. 20-22.
- (12) Provost, *International Human Rights and Humanitarian Law*, pp. 5-6.
- (13) General Assembly resolution 217 (III), 10 December 1948.
- (14) Donnelly, *International Human Rights*, p. 20.
- (15) Freedman, Michael, *Rights*, Milton Keynes: Open University Press, 1991, p. 7.

- (16) Donnelly, *International Human Rights*, p. 22.
- (17) Donnelly, Jack, *Universal Human Right in Theory and Practice*, Ithaca and London: Cornell University Press, 1989, p. 14.
- (18) Preamble to the ICC Statute.
- (19) Shaw, Malcolm N., *International Law*, Fourth edition, Cambridge: Cambridge University Press, 1997, pp. 200-201.
- (20) Article 23(a) of the Covenant of the League of Nations.
- (21) Article 23(b) of the Covenant of the League of Nations.
- (22) Articles 1(3), 13(1), and 55 of the UN Charter.
- (23) Article 56 of the UN Charter.
- (24) General Assembly resolution 2200 A (XXI), 16 December 1966 (entry into force on 23 March 1976).
- (25) Article 1 of the Genocide Convention.
- (26) For the detail, see Shaw, *International Law*, pp. 225-249.
- (27) ECOSOC resolution 1235(XLII), 6 June 1967.
- (28) See Donnelly, *International Human Rights*, pp. 26-27; and Shaw, *International Law*, pp. 202, 802-803.
- (29) Articles 2(1) and 2(7) of the UN Charter respectively.
- (30) See, for example, the so-called sixth and third principles, respectively, of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) (1970)).
- (31) See, for example, Article 4(1) of the 1966 International Covenant on Civil and Political Rights and Article 15 of the European Convention on Human Rights. Even under such circumstances, however, some of 'core rights' could not be derogated such as the inherent right to life (Article 6 of the ICCPR; Article 2 of the ECHR), the right not to be subject to torture or cruel, inhumane or degrading treatment or punishment (Article 7; Article 3), the right not to be held slavery and servitude (Article 8; Article 4), and so on. However, there is no provision for sanctions on their violations.
- (32) MacKinnon, Catharine A., "Crimes of War, Crimes of Peace," in Stephen Shute and Susan Hurley (eds.), *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books, 1993, pp. 83-109, at p. 97.
- (33) See, Smith, Thomas W., "Moral Hazard and Humanitarian Law: The International Criminal Court and the Limitation of Legalism," *International Politics* 39, June 2002, pp. 175-192, at p. 179.
- (34) Shaw, *International Law*, p. 202.
- (35) Donnelly points out the continuing centrality of the state and the legal positivism in the field of international human rights law: "To the realist, human rights are largely

- irrelevant to the national interest defined in terms of power. To the legal positivist, they present an archetypical example of actions solely within the domestic jurisdiction, and thus the sovereign prerogative, of states” (Donnell, *International Human Rights*, p. 71). See also Shaw, *International Law*, pp. 198-200.
- (36) See, for example, the preamble to the ICC Statute.
- (37) MacKinnon argues that “[h]uman rights have no ground and no teeth. As to teeth, human rights are enforced internationally primarily between states, states that agree to them . . . Enforcement is mainly through reporting, meaning moral force, meaning effective nonenforcement” (MacKinnon, “Crimes of War, Crimes of Peace,” p. 97).
- (38) See Dickinson, Laura A., “The Promise and Hybrid Courts,” *American Journal of International Law* 97(2), 2003, pp. 295-310, at p. 295.
- (39) Cassese, Antonio, “International Criminal Law,” in Malcolm D. Evans (ed), *International Law*, Oxford: Oxford University Press, 2003, pp. 721-756, at p. 728.
- (40) Kerr, Rachel, “International Judicial Intervention: The International Criminal Tribunal for the Former Yugoslavia,” *International Relations*, XV(2), August 2000, pp. 17-26, at p. 19
- (41) *Ibid.*, pp. 17-18.
- (42) Steiner, Henry J., and Philip Alston, *International Human Rights in Context: Law, Politics, Morals—Text and Materials*, Second edition, Oxford: Oxford University Press, 2000, pp. 1155-1156.
- (43) Quoted in Kerr, “International Judicial Intervention,” p. 21.
- (44) Smith, Thomas W., “Moral Hazard and Humanitarian Law: The International Criminal Court and the Limitation of Legalism,” *International Politics* 39, June 2002, pp. 175-192, at pp. 185-186; Kerr, “International Judicial Intervention,” p. 18; Pfaff, William, “Judging War Crimes,” *Survival* 42(1), Spring 2000, pp. 46-58, at p. 47.
- (45) Kerr, “International Judicial Intervention,” p. 21.
- (46) Crawford, James, “The ILC Adopts a Statute for an International Criminal Court,” *American Journal of International Law* 89(2), 1995, pp. 404, at p. 415.
- (47) Kerr, “International Judicial Intervention,” p. 21
- (48) Pfaff, “Judging War Crimes,” p. 56.
- (49) *Ibid.*
- (50) See Murphy, Sean D., “Progress and Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia,” *American Journal of International Law* 93(1), 1999, pp. 57-97, at pp. 96-97.
- (51) *Report of the Group of Experts for Cambodia established pursuant to General Assembly resolution 52/135 (Group of Experts Report)*, annex to *Identical letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council (Secretary-General’s Report)*,

- A/53/850, S/1999/231, 16 March 1999, paras. 219(1) and 219(3).
- (52) *Group of Experts Report*, para. 126.
- (53) *Secretary-General's Report*, para. 7.
- (54) *Ibid.*
- (55) See Linton, Suzannah, "Cambodia, East Timor and Sierra Leone: Experiments in International Justice," *Criminal Law Forum* 12, 2001, pp. 185-246, at p. 185; Dickinson, "The Promise and Hybrid Courts," p. 295.
- (56) Bar-Tal and Bennink, "The Nature of Reconciliation as an Outcome and as a Process," p. 29.
- (57) Cassese, *International Criminal Law*, p. 10.
- (58) *Ibid.*, p. 451.
- (59) UNTAET/REG/2001/10 (13 July 2001).
- (60) <http://www.easttimor-reconciliation.org/bgd.htm>.
- (61) UNTAET/REG/2001/10, preamble, section 1 and section 3.1.
- (62) UNTAET/REG/2000/15 (6 June 2000).
- (63) Beth Lyons points out that these two categories of crime are not strictly distinctive and often overlap (Lyons, Beth S., "Getting Untrapped, Struggling for Truths: The Commission for Reception, Truth and Reconciliation (CAVR) in East Timor," in Cesare P.R. Romano, André Nollkaemper, and Jann K. Kleffner (eds.), *Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford: Oxford University Press, 2004, pp.99-124, at pp. 100-101).
- (64) UNTAET/REG/2001/10, sections 23, 24 and 31.1(d).
- (65) "A person responsible for the commission of a criminal or non-criminal act" (UNTAET/REG/2001/10, section 23.1).
- (66) *The CAVR Final Report*, Part 9.4, para. 104 (available at <http://www.ictj.org>). This report was presented to the UN Secretary-General by the East Timorese president Gusmão on 20 January 2006.
- (67) See, for example, *the CAVR Final Report*, Part 6.1.1.
- (68) Ximenes, Fausto Belo, *The Unique Contribution of the Community-based Reconciliation Process in East Timor*, ICTJ paper, 28 May 2004 (available at <http://www.easttimor-reconciliation.org/jsmpReport-prk-summary.html>) (emphasis added).
- (69) Ramsbotham, Oliver, Tom Woodhouse, and Hugh Miall, *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*, Second edition, Cambridge: Polity Press, 2005, p. 240.

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