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WHY ONLY WAR CRIMES? DE-LINKING HUMAN RIGHTS OFFENSES FROM ARMED CONFLICT

by
Steven R. Ratner*

The term war crimes brings to mind a whirlwind of disturbing memories — from the Holocaust to My Lai to the roundup and execution of young and old men throughout Bosnia-Herzegovina. Yet alongside these images of war are others that should not be neglected by the international community — those of the Kulaks, or the Gulag, of Mao’s millions of victims, or of the Khmer Rouge’s torture chambers. Moving from the millions of victims to the mere thousands, the recent past has witnessed the phenomenon of the disappeared throughout Latin America, the practice of slavery in parts of Africa, and the systematic use of torture worldwide. What all these atrocities have in common is that they took place *outside* of any armed conflict and, thus, cannot be labeled as war crimes, though they often are.¹

There can be no doubt that the notion of the war crime is well imbedded in international law, as the law has long recognized individual criminal liability for certain violations of the laws of armed conflict through both treaty and custom.² More problematic, and

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1. See, e.g., *U.S. to Press for Pol Pot Trial*, N.Y. TIMES, July 30, 1997, at A10 (Secretary of State Albright calling Khmer Rouge leader a “war criminal”).

2. See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, art. 146, 6 U.S.T. 3516, 3616, 75 U.N.T.S. 287, 386; *Charter of the International Military Tribunal*, art. 6(b), in Agreement for the prosecution and punishment of the major war criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 279, 288; [hereinafter IMT Charter]; *Report of the Secretary-General Pursuant to Paragraph 2 of*

less systematic, however, is the law's progress regarding accountability for human rights atrocities in peacetime. Where international humanitarian law has detailed treaties on the law of armed conflict that specify those violations incurring individual responsibility, the body of international human rights law covering situations outside of armed conflict has tended to focus on the duties of states, rather than individuals.³ As a result, international law has only a handful of treaties criminalizing certain human rights atrocities, leaving some as crimes by virtue of customary law and many abuses not crimes at all. In those situations where treaty or custom does not impose individual responsibility, only the state overseeing the abuses is responsible under international law, with the perpetrators facing whatever punishment that state may — or may not — choose to impose.

This essay seeks to examine the causes and consequences of this schizophrenia in international criminal law.⁴ Part I addresses the underlying reason for the international community's preoccupation with war crimes as the primary locus of individual accountability. Part II outlines the trends, some quite significant, in favor of a breakdown of the linkage between criminality and war and of a more unified approach to individual accountability. Part III considers the means for strengthening accountability for atrocities during peacetime.

I. ROOTS OF THE LINKAGE BETWEEN CRIMINALITY AND WAR

To the non-international lawyer, the incongruence between, on the one hand, the prescription in international humanitarian law of rules specifying the duties of states and imposing criminal liability on individuals and, on the other hand, the incompleteness in inter-

Security Council Resolution 808 (1993), U.N. Doc. S/25704, at 9 (showing customary law status of war crimes).

3. International human rights law refers to the body of international law aimed at protecting the human dignity of the individual. The law of armed conflict, or international humanitarian law, addresses limits on warmaking methods (the Law of The Hague) as well as protections of certain individuals during wartime (the Law of Geneva). STEVEN R. RATNER & JASON S. ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY* 9 (1997).

4. International criminal law is best defined as the international law assigning criminal responsibility for certain particularly serious violations of international law. It thus overlaps with international humanitarian and human rights laws to the extent that those bodies of law provide for individual responsibility. *Id.*

national human rights law of criminality for many violations of the law may seem surprising.⁵ Yet the root cause of the schism lies in the history of international law itself. For despite all the abuses governments have heaped upon their citizens, international law had little to contribute on this issue until fairly recently. As defined by the positivist school that dominated the field from the late 18th century, the law of nations governed exclusively relations between states (and between their sovereigns), with individuals at best the third-party beneficiaries of the law of nations. The notion that the law would even govern behavior of governments vis-à-vis their own citizens, let alone prescribe accountability for individuals for violations of those rules of conduct, was anathema to the entire exercise. Internal sovereignty was, until early in this century, nearly complete and insulated from the law of nations.⁶

The only areas of international law that addressed violations of individual rights by governments concerned actions by governments against citizens of *other* states — acts deemed an affront to those states and thus within the ambit of international law.⁷ In doctrinal terms, these fell within two areas. First, the law of state responsibility for injury to aliens, which primarily dealt with disruption of property interests of aliens by foreign states but also included attacks on individual persons, and second, the laws and customs of war, which recognized certain limitations on the conduct of war that thereby indirectly promoted some individual rights in wartime.⁸ By the early part of this century, the Law of The Hague (so named due

5. Even under international humanitarian law, not all violations are war crimes. Rather, the notion is confined to particularly severe violations such as those nominated “grave breaches” under the Geneva Conventions.

6. See, e.g., *Dreyfus v. Von Fink*, 534 F.2d 24, 31 (2d Cir.), *cert. denied*, 429 U.S. 835 (1976), *dictum rev’d in Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). Cf. *S.S. Lotus* (Fr. v. Turk.), 1927 PCIJ, ser. A, no. 10, at 18. See generally W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT’L L. 866 (1990).

7. See generally Karl Josef Partsch, *Individuals in International Law*, in 2 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 957, 959-60 (Rudolph Bernhardt ed., 1995). Of course, international law addressed another key crime against individuals — piracy — but that crime, by definition, involved persons not under the control of any government.

8. HUGO GROTIUS, 2 DE JURE BELLI AC PACIS, ch. 20, § 40 (Louise R. Loomis, trans., Walter J. Black, Inc., 1949) (1625). See also EMMERIC DE VATTEL, 1 LE DROIT DES GENS, Ch. 19, paras. 232-33 (1758); L.C. Green, *International Crimes and the Legal Process*, 29 INT’L & COMP. L.Q. 567, 570-72 (1980); Yoram Dinstein, *Human Rights in Armed Conflict*, in 2 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 345, 347 (Theodor Meron ed. 1984) (“generally speaking, wartime human rights preceded those of peacetime in the international arena.”).

to the treaties drafted there) had placed some limits on methods of warfare, while the Law of Geneva imposed certain duties towards enemy civilians and soldiers no longer engaged in battle.⁹ But even the law of war traditionally was silent as to the consequences for individuals who violated it. Instead, some states signed treaties to punish as war crimes certain violations of the laws of war.¹⁰

The silence of international law regarding the consequences for government-sponsored abuses of human rights began to change after the First World War, and even more so after World War II. The Nuremberg Charter gave the International Military Tribunal jurisdiction not only over traditional war crimes,¹¹ but also over a new category of crimes — crimes against humanity. These entailed large-scale, systematic persecution of civilians based on racial, religious, or political grounds and were meant to address the Holocaust and similar atrocities. But the definition of crimes against humanity was limited — to those atrocities committed in connection with the war.¹² As a practical matter, of course, most of the Nazi crimes were indeed connected with the war. The new category of crimes meant that the Allies could prosecute the Nazis for crimes against other Germans during the war (such as murder and deportations of German Jews), acts that were not classic war crimes.¹³ But this linkage also meant that *pre-war* atrocities against other Germans were not considered crimes against humanity.¹⁴

9. See generally GEOFFREY BEST, *WAR AND LAW SINCE 1945*, at 39-59 (1994); M. Cherif Bassiouni, *Regulation of Armed Conflict*, 1 *INTERNATIONAL CRIMINAL LAW* 201, 201-04 (M. Cherif Bassiouni ed., 1986).

10. Yves Sandoz, *Penal Aspects of International Humanitarian Law*, 1 *INTERNATIONAL CRIMINAL LAW*, *supra* note 9, at 209, 209-213; Leo Gross, *The Punishment of War Criminals: The Nuremberg Trial*, 2 *NETH. INT'L L. REV.* 356, 358 (1955); James W. Garner, *Punishment of Offenders Against the Laws and Customs of War*, 14 *AM J. INT'L L.* 70 (1920).

11. IMT Charter, *supra* note 2, art. 6(b).

12. IMT Charter, *supra* note 2, art 6(c). For background on the linkage, see Roger S. Clark, *Crimes Against Humanity at Nuremberg*, in *THE NUREMBERG TRIAL AND INTERNATIONAL LAW* 177, 180-92 (George Ginsburgs & V.N. Kudriavtsev eds., 1990); UNITED NATIONS WAR CRIMES COMMISSION, *HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION AND THE DEVELOPMENT OF THE LAWS OF WAR 193-95* (1948).

13. The court assumed a linkage between the acts and the war crimes or crimes against the peace because of the chronological overlap, thereby overcoming any jurisdictional obstacles. UNITED NATIONS WAR CRIMES COMMISSION, *supra* note 12, at 195.

14. 22 IMT Trials at 498. See also Egon Schwelb, *Crimes Against Humanity*, 23 *BRIT. Y.B. INT'L L.* 178, 205 (1946); Elisabeth Zoller, *La définition des crimes contre l'humanité*, 120 *JOURNAL DE DROIT INTERNATIONAL* 549, 553-55 (1993).

Notwithstanding significant developments in the law in favor of breaking the linkage of crimes against humanity with armed conflict (see part II *infra*), it proved to have some staying power. Forty-seven years after the IMT Charter, when the UN Security Council established the International Criminal Tribunal for the Former Yugoslavia, it defined crimes against humanity as certain acts (murder, extermination, torture, etc.) "when committed in armed conflict," although it at least recognized that the conflict could be "international or internal in character."¹⁵

II. TRENDS OF DECISION TOWARDS CRIMINALIZATION OF HUMAN RIGHTS ATROCITIES OUTSIDE OF ARMED CONFLICT

What, then, have been the trends in the other direction, in favor of criminalizing human rights atrocities without regard to armed conflict? Five important developments deserve mention.

First, even before the advent of modern human rights law, slavery treaties have called for states to punish those practicing the slave trade. Most significant among these are the 1926 Slavery Convention,¹⁶ the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,¹⁷ and the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁸ The conventions vary in substance, from mere identification of slavery as a crime, to a duty or right to prosecute, to a duty to extradite or cooperate in law enforcement.¹⁹

15. *Statute of the International Criminal Tribunal for the Former Yugoslavia*, art. 5, in *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, *supra* note 2, at 9.

16. Slavery Convention, Sept. 25, 1926, as amended by the Protocol of 7 December 1953, art. 6, 212 U.N.T.S. 17, 22 ("Parties whose laws do not at present make adequate provision for the punishment of infractions [under the Convention] . . . undertake to adopt the necessary measures in order that severe penalties may be imposed . . .").

17. Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3.

18. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 271.

19. See 1 M. CHERIF BASSIOUNI, *INTERNATIONAL CRIMES: DIGEST/INDEX OF INTERNATIONAL INSTRUMENTS* 499-508 (1986) (categorizing levels of criminality in slavery instruments). See also STEFAN GLASER, *DROIT INTERNATIONAL PÉNAL CONVENTIONNEL* 121-26 (1970).

Second, in the years immediately following the war, the United Nations oversaw the drafting of a treaty that criminalized one particular crime against humanity without any reference to armed conflict — genocide. The 1948 Genocide Convention, however, includes two very specific criteria to constitute genocide — namely, that the atrocities be aimed against a racial, religious, national, or ethnic group; and that they be done with the intent to destroy the group in whole or in part.²⁰ These criteria were, alas, easily met in cases like Rwanda and likely met in Saddam Hussein's slaughter of the Kurds in Iraq.²¹ But the narrow definition of genocide has meant that some horrendous government-sponsored atrocities do not qualify, the most notable recent example being the terror of the Khmer Rouge. Although they committed genocide against certain minorities in Cambodia, the bulk of their atrocities were aimed against victims based on their politics or social status. (Only a tiny part of their murders were classic war crimes, principally against Vietnamese during Cambodia's conflict with Vietnam.)²²

Third, beginning in 1950, the United Nation's International Law Commission has sought to draft a comprehensive regime of individual criminality through the Code of Offenses against the Peace and Security of Mankind. This process has staggered along slowly. After completing a draft in 1954, it suspended work until 1983 because some states insisted that the General Assembly first reach a definition of aggression (the first crime in the draft code). From 1983 to 1996, it debated anew the definitions of crimes and the scope of the list, completing a new draft code in 1996, though that document's future remains uncertain.²³

Fourth, international organizations have overseen the drafting of a small number of treaties that have criminalized atrocities other than genocide regardless of their setting. Most notable are the 1984 United Nations Convention Against Torture and Other Cruel,

20. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, art. II, 78 U.N.T.S. 277, 280 [hereinafter Genocide Convention].

21. On Iraq, see Memorandum from Lori F. Damrosch, Columbia University School of Law, to Andrew Whitley, Middle East Watch, entitled Kurdish Genocide Case - Legal Memorandum for Governments (June 4, 1993) (on file with author).

22. RATNER & ABRAMS, *supra* note 3, at 243-53.

23. *Draft Code of Crimes Against the Peace and Security of Mankind*, Report of the International Law Commission on the work of its forty-eighth session, U.N. GAOR, 51st Sess., Supp. No. 10, at 14, U.N. Doc. A/51/10 (1996) [hereinafter ILC Draft Code].

Inhuman or Degrading Treatment or Punishment²⁴ and the Organization of American States conventions on torture²⁵ and on disappearances.²⁶ They clearly create individual responsibility under international law by obligating states to extradite or prosecute all offenders found on their soil.

Finally, recent state practice in the drafting of statutes for *ad hoc* and permanent international criminal courts suggests that most states have come to accept publicly that crimes against humanity — which still remain uncodified by treaty — can indeed be committed in the absence of armed conflict. The Statute of the International Criminal Tribunal for Rwanda, passed by the Security Council in 1994, contains no nexus whatsoever to armed conflict.²⁷ The debates in the United Nations on the jurisdiction of the future permanent international criminal court also suggest that most states are willing to dispense with the connection, though a few powerful states, such as China, seem reluctant to endorse the notion for fear that their own activities against civilians could be seen as crimes.²⁸ This position has also received judicial approval as well from the International Criminal Tribunal for the Former Yugoslavia.²⁹

What has accounted for this modest progress? With the exception of the long-standing criminality of slavery, these developments have stemmed from nothing less than two core constitutive changes in the very nature of international law since the end of World War II. First, with the creation of a corpus of human rights law beginning with the Universal Declaration of Human Rights in 1948, the

24. U.N. GAOR, 39th Sess., Supp. No. 51, at 197, Dec. 10, 1984, GA Res. 39/46, Annex, U.N. Doc. A/39/51 (1984) [hereinafter *Torture Convention*].

25. Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, art. 2, O.A.S. T.S. No. 67, 25 I.L.M. 519 (1986).

26. Inter-American Convention on the Forced Disappearance of Persons, June 9, 1994, 33 I.L.M. 1529 (1994).

27. *Statute of the International Tribunal for Rwanda*, art. 3, S/RES/955, Nov. 8, 1994, Annex.

28. *Summary of the Proceedings of the Preparatory Committee During the Period of 25 March - 12 April 1996*, U.N. Doc. A/AC.249/1, at 17, 67-70 (1996) [hereinafter *Prep. Committee Summary*]; U.S. Department of State memorandum on positions of delegations regarding jurisdiction of an international criminal tribunal, 1995 (on file with author); Rome Statute of the International Criminal Court, art. 7, U.N. Doc. A/CONF. 183/9 (no nexus).

29. *Prosecutor v. Tadic*, No. IT-94-1-AR 72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, Yugoslavia Tribunal Appeals Chamber, Oct. 2, 1995, majority opinion, paras. 140-41, at 73, *reprinted in* 35 I.L.M. 32, 72 (1996); *Prosecutor v. Tadic*, No. IT-94-1-AR72, Opinion and Judgment, Yugoslavia Tribunal Trial Chamber, May 7, 1997, paras. 622-27, at 234-37, *reprinted in* 36 I.L.M. 908, 936-38 (1997).

way a government treats its own citizens has clearly become a matter of international regulation, not state prerogatives.³⁰ It was thus inevitable that states would eventually come to regard some of the most egregious violations of human rights as fit for individual criminal responsibility and not merely state civil responsibility.

A second constitutive change at work in contributing to states' willingness to entertain notions of accountability for peacetime atrocities was the United Nations Charter's proscription on all armed force not used in self-defense.³¹ As a consequence, the international law notion of war and peace as two legally distinct states of affairs, equally acceptable normatively, with different rules to govern them, has become anachronistic.³² Human rights treaties, for instance, clearly apply in times of armed conflict, even if states are free to derogate from some of their provisions in these situations.³³ And, conversely, certain acts against civilians that were punishable only when committed during armed conflict are now susceptible to punishment in peacetime.

At the same time, the criminality of peacetime atrocities has not caught up with that of war crimes. One important manifestation of the difference is the scale of the abuses necessary to trigger criminality. For instance, if a soldier kills one POW, it is a war crime, as the Geneva Conventions contain no requirement of scale;³⁴ in peacetime, however, criminality generally requires more than an isolated murder under either the Genocide Convention or

30. See, e.g., MYRES S. MCDUGAL ET AL., *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY* 313-32 (1980); Reisman, *supra* note 6.

31. U.N. CHARTER art. 2, para 4. As noted, the Nuremberg Charter made aggressive war not merely illegal, but a crime for which individuals could be brought to trial. Yet the lack of a clear definition for purposes of individual criminal responsibility and the difficulties of factual inquiries (including the possibility of biased investigations) have contributed to a lack of consensus on holding individuals culpable, as seen by the unwillingness of the Security Council to include them in the Statute of the Yugoslavia Tribunal. For a sense of the debate, see Prep. Committee Summary, *supra* note 28, at 12-13 (debates of Preparatory Committee on the Establishment of an International Criminal Court). For commentary, see, e.g., Bert V.A. Röling, *Crimes Against Peace*, in 1 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, *supra* note 7, at 875.

32. See, e.g., Clive Parry, *The Function of Law in the International Community*, in *MANUAL OF PUBLIC INTERNATIONAL LAW* 1, 33-36 (Max Sørensen ed. 1968); LUNG-CHU CHEN, *AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW* 316-19 (1989).

33. See International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 4, 999 U.N.T.S. 171, 175; Dinstein, *supra* note 8, at 350-56.

34. RATNER & ABRAMS, *supra* note 3, at 85.

the customary law on crimes against humanity,³⁵ and there is no treaty which criminalizes individual summary executions. But, perhaps strangely, the torture of that one political prisoner in peacetime is a crime because of the United Nations Convention Against Torture, which covers individual instances.³⁶

III. TOWARD GREATER ACCOUNTABILITY FOR PEACETIME HUMAN RIGHTS ATROCITIES

If the relatively unsystematic criminalization of peacetime atrocities (at least as compared to war crimes) is now anachronistic, what can states do to rectify the dichotomy?

First, states must ratify and implement the treaties already concluded. That means, for instance, in the case of the Torture Convention or the Organization of American States Convention on Disappearances, that states with custody over an offender must carry out their obligation to extradite or prosecute him. Relatedly, states must comply with their existing obligations under the Security Council resolutions establishing the Yugoslavia and Rwanda tribunals.³⁷ As long as they fail to carry out these mechanisms of individual responsibility, they incur state responsibility for illegal conduct.

Second, states can prepare further treaties criminalizing such atrocities and requiring states to extradite or prosecute offenders. Areas such as summary executions and sexual crimes would seem most appropriate for further codification. A treaty on crimes against humanity would also be helpful. The definitions in the I.L.C.'s 1996 Draft Code represent a promising starting point in this connection.³⁸

Third, states should assert their rights under customary international law to enact statutes that permit them to prosecute for atrocities that take place beyond their borders, under the theory of universal jurisdiction, and then go ahead and prosecute such atroci-

35. See, e.g., *id.* at 37; Yugoslavia Tribunal Statute, *supra* note 15, art. 5 ("directed against any civilian population"); Rwanda Tribunal Statute, *supra* note 26, art. 3 ("part of a widespread or systematic attack against any civilian population"); RATNER & ABRAMS, *supra* note 3, at 57-60.

36. Torture Convention, *supra* note 24, art. 1.

37. S/RES/827, U.N. SCOR, 48th Year, Res. & Dec., at 29, U.N. Doc. S/INF/49 (1993); S/RES/955, U.N. SCOR, 49th Year, Res. & Dec., at 15, U.N. Doc. S/INF/50 (1994).

38. ILC Draft Code, *supra* note 23, arts. 16-20, at 83-120.

ties. For example, although the Genocide Convention only requires states to prosecute for genocide that takes place on their territory,³⁹ customary international law clearly recognizes the right (though not the duty) of a state to prosecute for genocide committed anywhere, regardless of the nationality of the perpetrator or the victim.⁴⁰ Similar principles of universal jurisdiction also apply to crimes against humanity,⁴¹ slavery,⁴² and torture.⁴³ Utilization of this strategy would help deny a safe haven to some offenders. States have, to date, been extremely reluctant to assert universal jurisdiction to prosecute.⁴⁴ Instead, they have generally prosecuted for human rights abuses abroad only where another basis for jurisdiction prevails, e.g., the nationality of the offender or the victim.⁴⁵

Lastly, NGOs and others need to be conscious of the fact that *individual* accountability need not always equate with *criminal* accountability. Indeed, states have experimented in recent years with a variety of mechanisms to provide for recognition of individual responsibility in addition to, and often instead of, criminal prosecutions. Most common and publicized have been the investigatory or "truth" commissions, but other methods have been attempted as well, including lustration, or denial of certain employment positions

39. Genocide Convention, *supra* note 20, art. VI, 78 U.N.T.S. at 280.

40. See Attorney-General of the Government of Israel v. Eichmann, 36 I.L.R. 18 (Dist. Ct. Jerusalem 1961), *aff'd*, 36 I.L.R. 277 (Israel 1962) (basing jurisdiction on protective, passive personality, and universality principles); *In re the Extradition of Demjanjuk*, 603 F. Supp. 1468 (N.D. Ohio), *aff'd*, 776 F.2d. 571 (6th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 (1987) [hereinafter RESTATEMENT].

41. See generally *Demjanjuk and Eichmann*, *supra* note 40. See also RESTATEMENT, *supra* note 40, § 404; Letter dated 9 February 1993 from the Secretary-General Addressed to the President of the Security Council, Feb. 10, 1993, U.N. Doc. S/25274, at 20; Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785, 788-90, 814 (1988).

42. See RESTATEMENT, *supra* note 40, § 404; Randall, *supra* note 41, at 798-800 & n.79.

43. RESTATEMENT, *supra* note 40, § 404; 18 U.S.C. § 2340A (1994) Crimes (Torture) Act, 1988 Austl. Acts. No. 148, § 6; but see Randall, *supra* note 41, at 788-90, 822-23.

44. See Anthony DePalma, *Canadians Surprised by Proposal to Extradite Pol Pot*, N.Y. TIMES, June 24, 1997, at A10; but see Alan Cowell, *Bosnian Serb Is Sentenced to Life Term for Genocide*, N.Y. TIMES, September 27, 1997, at A5.

45. See Laurent Greilsamer, *Pour séquestration et torture de deux religieuses françaises le capitaine argentin Alfredo Astiz est condamné à la réclusion criminelle à perpétuité par contumace*, LE MONDE, Mar. 19, 1990, at 1 (trial *in absentia* by France against Argentine for murder of French nuns); Marlise Simons, *Unforgiving Spain Pursues Argentine Killers*, N. Y. TIMES, Oct. 24, 1996, at A3; *Argentina nixes extradition of Italian*, Agence France-Presse, Aug. 25, 1996 (available on NEXIS).

to those responsible for abuses, and the opportunity to file civil suits against human rights abusers, a practice allowed under the U.S. Alien Tort Statute and Torture Victim Protection Act.⁴⁶

A prescription of strategies for enforcing individual accountability must, however, conclude with a caveat. However important further elaboration and enforcement of international criminal law concerning human rights abuses will be, it cannot be a substitute for other forms of action, and it would indeed be a serious error for the international human rights community to focus all its attention on this enterprise. Rather, the traditional strategies to secure compliance with international human rights laws remain pertinent as states and international organizations continue the experiment with individual accountability. These means turn on making the state or non-state entity committing abuses assume the responsibility for the action of its agents through the glare of international publicity shown on abuses by the international organizations and NGOs, through diplomatic isolation, through economic sanctions, and, in exceptional cases, through military intervention to prevent or bring a halt to large-scale atrocities. Given the state of enforcement mechanisms for international criminal law, those contemplating or committing human rights abuses may not yet fear individual accountability. But they should know that the international community remains prepared to make robust use of other sanctioning devices.

46. For background, see RATNER & ABRAMS, *supra* note 3, at 201-11.

