From Sovereign Impunity to International Accountability

The Search for Justice in a World of States

Edited by

Ramesh Thakur and Peter Malcontent

From sovereign impunity to international accountability: The search for justice in a world of states

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United Nations University Press

TOKYO • NEW YORK • PARIS

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Human rights and peace: Two sides of the same coin

Peter Malcontent

Introduction

From the perspective of human rights, the last decade of the twentieth century may be regarded as a turbulent period characterized by positive as well as negative developments.

After the Cold War, the end of the bipolar balance of power created a vacuum in many parts of the world, which allowed religious and ethnic conflicts that had often been smouldering beneath the surface to erupt into instability and conflict. In many cases, these conflicts resulted in gross violations of human rights. In Europe, civil war and ethnic cleansing ravaged the Balkan region. In Africa, countries such as Somalia and Rwanda were confronted with genocide and anarchy.

Ironically, a positive result of these negative developments was the increasing consciousness at the international level that human rights had to be regarded as a precondition for political stability and socio-economic progress. Consequently, human rights started to climb the ladder of international political priorities and became strongly interrelated with the ''higher objective'' of maintaining international peace and security.

The notion that human rights and peace and security were nothing less than two sides of the same coin was not just an abstract concept. The Security Council of the United Nations, no longer paralysed by political and ideological stalemate between the United States and the Soviet Union, started to mainstream human rights in existing peace and security

instruments such as UN peacekeeping and peace enforcement operations. It also took the initiative to revise an old and almost forgotten instrument in order to better equip the United Nations to integrate human rights and security. As a result, almost 50 years after the proceedings of the Nuremberg tribunal (''the mother of all international criminal tribunals''), the Security Council decided to reintroduce the instrument of international criminal justice by establishing ad hoc tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, respectively.

In Resolutions 808 and 955, which founded these tribunals, the Security Council showed its determination to put an end to the continuing violations of international humanitarian law through the prosecution of individual perpetrators of war crimes, genocide and crimes against humanity in both countries. But this was not the only task ascribed to the tribunals. Legitimizing the establishment of both tribunals by referring to Chapter VII of the UN Charter, which empowers the Security Council to take any necessary action in cases of serious threats against international peace and security, the Council also hoped that the proceedings of the two tribunals could contribute to the broader challenge of peace and stability.

With the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), a new challenge was launched against the age-old bulwark of national sovereignty, which, in spite of an increasing number of minor cracks since 1945, still functioned as the governing principle on which inter-state relations have been based since Westphalia. Five decades after Nuremberg, the international community regained its courage to demand individual accountability for serious violations of human rights, especially during wartime, even when committed by leading government officials on behalf of the state. National sovereignty no longer guaranteed immunity and impunity.

How have the two ad hoc tribunals dealt with their difficult tasks of promoting both human rights and peace and security? And what may be expected from the new permanent International Criminal Court (ICC), which entered into force in 2002?[1] These were the central issues discussed during the conference ''From a Culture of Impunity to a Culture of Accountability'', organized by the United Nations University (UNU) and the Netherlands Institute of Human Rights (SIM) in November 2001 in the Netherlands. This volume constitutes an interdisciplinary reflection of the results of this event and contains 16 chapters written by prominent lawyers, historians and political scientists.

On the basis of a categorization of the main issues discussed in each chapter, the book can be divided into three separate although interrelated parts. Part I outlines the historical and political background to the

establishment of the ad hoc tribunals and the ICC, by focusing not only on those factors that contributed to the increasing popularity of these instruments but also on those factors that hampered and still hamper their functioning. The actual functioning of the tribunals and the ICC as judicial mechanisms is dealt with in Part II. What is their record in providing fair trials to victims as well as perpetrators, however heinous their crimes may be? And, more generally, to what extent have they been successful in establishing a culture of accountability without harming other principles and achievements which have proceeded from the same norms and values that initiated the struggle against impunity? The third and last part of this volume concentrates on the effectiveness and limitations of international criminal tribunals in protecting human rights and maintaining peace and security through criminal justice. More specifically, Part III deals with questions and issues such as the effectiveness of international criminal tribunals compared with other, non-judicial instruments such as truth and reconciliation commissions; their competence to deal with actors other than individuals, such as companies; and whether the popularity of international criminal procedures includes the risk of becoming a substitute for earlier meaningful action, creating only an illusion of progress in the field of enhancing human rights and peace and security.

Part I: The historical and political context

This section starts with a historical overview by Paul Lauren, who explains the establishment of the tribunals and the Rome Statute by referring to five ''forces of transformations'': religious belief; philosophical belief; the ongoing technological revolution, and especially the advances in communications technology; conflicts and revolutions that destroy existing structures of authority and vested interests; and the tragic force of enormous human atrocities, confronting humankind time and time again with the necessity to break through moral thresholds. According to Lauren, these forces were essential to overturning the powerful notion of national sovereignty and the widespread culture of impunity that results from it.

In the following chapters, Michael Biddiss, David Forsythe and George Andreopoulos show that, although there is indeed a changing human rights culture at the international level, major obstacles to accountability still exist. In Chapter 2, Biddiss presents a historical analysis of the limits of international criminal accountability. He shows how, from Nuremberg to the entering into force of the ICC in 2002, the protection shield against accountability – national sovereignty – remained relatively robust in spite of some successful attacks. Even after the atrocities of World War II,

progress continued to be hampered by national reservations; the inclusion of the new notion of ''crimes against humanity'' as Count Four in the indictment of the Allied prosecuting teams against the leaders of the Third Reich before the Nuremberg tribunal is a good illustration of this. By defining crimes against humanity as committed against any population before as well as during wartime, the Allied powers intended to punish not only Nazi crimes committed after the outbreak of the war, but also the extensive persecution of political opponents and Jews within Germany in the 1930s. The devastating effect this new category of international law could have on the principle of national sovereignty during peacetime was clear. The Allied powers realized this all too well and, being afraid that their own invention could turn against them, they restricted the range of Count Four by adding to the definition of crimes against humanity the necessity that there had to be a relationship between Count Four and any of the other crimes within the jurisdiction of the tribunal. In practice, this meant that there had to be a relationship with warfare or its preparation, and, as a result, the judges of the tribunal backed away from crimes inflicted by the Third Reich on its own population in the period 1933–1939.

According to Biddiss, who is more sceptical than Lauren about the post-war move from impunity towards accountability, the tale developing from Nuremberg to a large extent remained a disappointing one. A decisive blow against the conservative exercise of sovereign autonomy was emasculated. Because of their ad hoc character, tribunals such as the ICTY retained the stain of victors' justice; as a result, like the Nuremberg tribunal, they remained sensitive to *tu quoque* rebuttals (''I did it, but you did it too''). Unfortunately, the solution for this problem, the establishment of a *permanent* International Criminal Court, continues to be frustrated by the present dominant world power, the United States.

In Chapter 3, Forsythe offers an in-depth analysis of the widespread aversion in the United States to the ICC. According to him, the insurmountable objections being raised by American politicians as well as academics are remarkable because the ICC operates on the basis of complementarity, meaning that it can transcend national jurisdictional powers only when a state is unwilling or unable to prosecute crimes committed on its territory or by its citizens abroad. Forsythe shows that the US legal objections against the Rome Statute – the fear that it could allow an independent prosecutor to bring indictments against American citizens wherever they are, even when the United States remains a non-ratifying party – are expressions of much deeper political and cultural considerations. First, US aversion to the ICC is determined by what Forsythe defines as ''American exceptionalism'',[2] a deeply embedded view that real human rights come from the US experience and are then exported to the rest of the world. Because of this longstanding dominant

cultural tradition, the United States has manifested persistent difficulty in adjusting to multilateral human rights arrangements that it does not control or heavily influence. Secondly, American exceptionalism is reinforced by the unrivalled power position of the United States in international relations. As a result of this, the United States speaks fondly of international law as long as it does not constrain the exercise of US power. Forsythe specifically refers to the US response to the judgment of the International Court of Justice in the wake of *Nicaragua v. the US (1986)*. Its refusal to abide by the World Court's judgment was possible because there was no countervailing power to compel the United States to implement it.

Like Biddiss and Forsythe, Andreopoulos is sceptical of the evolving international human rights culture as described by Lauren. Andreopoulos places the establishment of the ad hoc tribunals and the ICC into the broader context of linking human rights violations and threats to peace and security in the 1990s, concluding that we are indeed confronted with a rising ''global ethos of accountability''. At the same time, however, he warns against euphoria by posing the question of whether the rising profile of human rights norms within the security discourse is in fact mere window-dressing or ''façade legitimation'', providing a gentler face to naked power considerations in pursuit of the national interests of states.

Part II: Functioning in practice

The second part of this volume starts with four contributions centred on the issue of whether international criminal tribunals have been able to bring justice to both victims and perpetrators. Two authors, Christine Chinkin and Michail Wladimiroff, evaluate the tribunals' contribution to the evolution of international criminal and humanitarian law. They explore the extent to which legal thresholds have been lowered to allow for the prosecution of those charged with serious violations, and especially of those whose role is not always easy to establish: alleged perpetrators of gender-related crimes such as rape, and military leaders and civilian superiors suspected of organizing, planning and inciting crimes without actually taking part in atrocities themselves.

In Chapter 5, Wladimiroff describes how the proceedings of the Nuremberg tribunal, the ICTY and the ICTR extended the doctrine of criminal responsibility to include not only factual but also functional responsibility for violations of humanitarian law, whether committed by military commanders or by government officials. Yet Wladimiroff acknowledges that even the provisions of the ICC Statute still make it easier to prosecute military leaders than civilian superiors. Military leaders can

already be prosecuted for negligence, whereas civilian superiors can be held functionally responsible for offences only when they are committed with the required intent and knowledge.

In Chapter 6, Chinkin analyses the advances being made by the ICTY and ICTR from a feminist perspective, proceeding from the assertion that the inclusion of sexual offences within the catalogue of international crimes must be accompanied by an understanding of those offences based upon women's experiences of them. Chinkin explains that the ad hoc tribunals have been helpful in this, for example by establishing a less restrictive definition of rape as an international crime. By emphasizing that the offence of rape does not require proof of force and by acknowledging that, in a situation in which an individual may not have protested or fought against sexual activity, such behaviour still can be spoken of as an act of rape, the ICTY and ICTR showed themselves prepared to take into account how women's experiences of offences such as these may differ from those of men.

The question remains, however, how far the ad hoc tribunals and the recently established ICC should go in centralizing the position and perception of the victim. Chinkin applauds the acceptance by the judges of the tribunals of inconsistencies in the evidence when prosecuting sexual offences, because these inconsistencies can be rationally explained by the difficulties of recollecting precise details of traumatic events several years later. Related to this, she also supports the successful inclusion in the Rome Statute of protective measures for witnesses and victims, especially when testifying about the commission of sexual offences.

Contrary to Chinkin, two other authors, Bert Swart and William Schabas, are not convinced that the shift from impunity to individual accountability should be achieved in this way. Schabas argues that the campaign against impunity has resulted in an unacceptable lowering of legal thresholds to increase the opportunities to convict defendants accused of war crimes, genocide and crimes against humanity. However, in Chapter 7 on the provisions on the admissibility of evidence in the Rules of Procedure and Evidence of the international criminal tribunals and the Rome Statute, Swart is positive about the fair trial standards maintained by both ad hoc tribunals. He shows how the legal protection offered to the defendant has been improved as a result of the increasing restraint on accepting hearsay evidence. Both the case law of the ICTY as well as the draft rules of the ICC stress the importance of providing the defence with the opportunity to cross-examine witness statements. Yet Swart also points out a ''striking innovation'' that could negatively affect the defendants' right to a fair and impartial trial. An important difference between the statute of the ICC and the statutes of the ad hoc tribunals is that the Rome Statute permits victims to take part in the proceedings in their

capacity as a witness *and* as a victim. Although from the point of view of the victim this is indeed a welcome innovation, Swart argues that the position of the defendant as a result of this dual role could be seriously undermined. Because the victim could provide information incriminating the accused, the court should not let itself be influenced by information provided by the victim that is not compatible with earlier statements offered in their position as a witness during cross-examination.

Schabas, in Chapter 8, is worried not only about the future but also about the present. He concludes that, in the past, human rights law concerned itself with protecting the accused and was not particularly interested in balancing these rights against the importance of prosecuting offenders. Now, however, it has become torn by another extreme, ''one that is oriented towards the victim and that thrives upon conviction''. As a result of this, the ICTY, for example, allowed for the use of anonymous witnesses and tended to go along with a more teleological or purposive approach to the interpretation of its statute while moving away from the old rule of giving the benefit of the doubt to the accused.

Other authors have argued that non-governmental organizations (NGOs) contributed to this process. For example, Geoffrey Robertson, in his book *Crimes against Humanity: The Struggle for Global Justice*, refers to the intense lobbying campaigns by more than 800 organizations during the 1998 diplomatic meeting in Rome resulting in the establishment of the ICC Statute. Robertson shows how NGOs such as Amnesty International, in their eagerness to establish an effective court, were prepared to abolish the defence of duress, the defence of necessity and even the defence of self-defence, even though this would result in an ICC that violated the basic human rights of its defendants.[3]

In her contribution on the position of NGOs in gathering evidence and giving witness at international criminal trials (Chapter 9), Helen Durham also argues that ''the involvement of NGOs in international criminal proceedings is a complex process fraught as much with danger as with great potential''. NGOs have access to networks and grassroots information and are often on-site when atrocities occur. As a result, they have first-hand knowledge of events and the best ability to identify potential witnesses. This puts NGOs in a unique position to gather and present evidence at international criminal trials. Durham, however, also points to the tension between the political nature of many NGOs and the judicial requirement of impartiality. Whereas NGOs can tend to be normative and political, the successful and credible prosecution of those accused of atrocities relies upon due process and an environment free from politics and passion. There is clearly a tension here.

The important question raised by Schabas of whether the tribunals have succeeded in combating impunity without harming other important

principles and norms is also dealt with by Madeline Morris in Chapter 10, albeit from a quite different perspective. She questions the democratic legitimacy of the ICC and perceives a tension between the right to freedom from violent abuse and the human right to representative government within the ICC Statute. Morris acknowledges the advantage of the court's complementary authority to investigate crimes committed within the territory of a member state that is unable or unwilling to do so, even when the alleged perpetrator is not a national from one of the states parties to the Rome Statute. Nevertheless, she also emphasizes that, although the court's supranational powers may contribute to the fight against impunity, its superior authority has caused a ''democratic deficit'' because of the court's organizational structure, which made the Assembly of States Parties its principal governing body. Within this organ, no seats with voting power are reserved for non-member states, in spite of the fact that the court can prosecute their nationals. But if this should happen, what then is the democratic basis for the ICC's power as applied to populations of states that continue to refuse to sign and ratify the ICC Statute?

Part III: Effectiveness and limitations

The last section of this volume deals with the effectiveness of international criminal tribunals in the broader challenge of both protecting human rights and maintaining peace and security. The first two chapters emphasize the positive qualities of international criminal tribunals in comparison with the functioning of national trials and non-judicial instruments such as truth and reconciliation commissions. The next three contributions focus on the limits of the effectiveness of international criminal tribunals in the field of human rights and peace and security.

As Martha Minow states in her book *Between Vengeance and Forgiveness*, the most prominent positive quality of criminal prosecution is that ''it transfers the individuals' desires for revenge to the state or official bodies. The transfer cools vengeance into retribution, slows judgment with procedure, and interrupts, with documents, cross-examination, and the presumption of innocence, the vicious cycle of blame and feud.''[4] But do these qualifications make international criminal tribunals the superior route towards long-term conflict resolution and reconciliation in fractured societies? According to Kingsley Moghalu, former Special Adviser to the Registrar of the Rwanda tribunal, the answer is positive. In his challenging contribution to this volume (Chapter 11), in which he focuses on the far-reaching judicial precedents established by the ICTR, he defends his position by analysing the functioning of the instrument of crim-

inal prosecution from a comparative perspective. Should we resort to the phenomenon of truth and reconciliation commissions (TRCs) used in many Latin American countries and in South Africa, where they facilitated the transition from repression and apartheid to democracy and majority rule? Although Moghalu acknowledges that this soft law instrument has certain advantages, he regards it as only a secondary or additional option to trials. Because TRCs cannot ensure criminal prosecution of perpetrators of mass crimes, they ultimately fail to address the yearning of the victims for justice. Indeed, a truth and reconciliation commission with the prospect of amnesties for perpetrators who offer full testimonies – as in South Africa – is hardly imaginable in cases of genocide such as the Holocaust or the Rwandese massacre in 1994. It is also questionable in other cases whether truth without justice can heal conflicted societies. In Chile, the truth commission was said to have laid the Pinochet issue to rest, but the polarization within Chilean society after his arrest in London proved otherwise.

Another fundamental benefit of criminal trials is that they differentiate between the main perpetrators, foot-soldiers and bystanders, and thereby alleviate collective guilt, which according to Moghalu and many other transitional justice lawyers can be a significant obstacle to genuine reconciliation within society. Moreover, in spite of the criticism that the ad hoc tribunals were established only as a reaction to the atrocities in the former Yugoslavia and Rwanda, Moghalu believes they serve a deterrent function as well. Although one could argue that the ICTR was not able to preclude new upheavals of ethnic violence in the Great Lakes region, Moghalu points out that, without the precedent of the ICTR and the ICTY, the ICC, which has an important preventive function, would never have been established.

Geoffrey Robertson's contribution in Chapter 12 also emphasizes the positive qualities of international tribunals in protecting human rights and maintaining peace and security. In his search for the best solution to deal with the terrorists responsible for atrocities such as the 11 September attacks, he dissociates himself from national judicial options such as a local jury trial in New York or a trial by a presidentially ordained military commission. The former would result in an emotional event automatically leading to the demand for the death sentence, and the latter would even more fail to conform to a minimum of fair trial guarantees. As a result, any verdict of guilty would be vulnerable to the allegation of subjectivity and certainly would not convince doubters and critics from the Islamic countries. Only an international tribunal or a national trial held in a neutral location, like the Lockerbie trial, could be a solution to this problem. Both options would at least offer the necessary impartiality.

By using one of these options to prosecute Osama bin Laden and his

al-Qaida accomplices, not only would the protection of the rights of both victims and perpetrators be guaranteed but, as Robertson emphasizes, international peace and security would also be rendered a good service: ''Yet suppose he were to be captured and interrogated, and later sit like Milosevic for some months in a criminal court dock and then, after a reasoned judgment, be locked for the rest of his life in a cell in Finland? Surely this would greatly assist the work of demystifying the man, debunking his cause and de-brainwashing his many thousands of followers.''

Instead of underlining the positive qualities of international tribunals, Andrew Clapham focuses in Chapter 13 on their most characteristic weakness; that is, that they have jurisdiction only over natural individual persons and not over states and corporations. One of the negative aspects emanating from the tribunals' incapacity to prosecute judicial persons is that this decreases victims' chances of claiming appropriate reparations for harm done to them by states or companies because only individual representatives can be forced to pay compensation. As a result, processes of reconciliation in societies torn by conflict can be thwarted.

However, Clapham emphasizes that, in spite of the inability of international criminal law to deal with private actors and states, one should not assume that so far it has been concerned solely with the liability of individuals. Returning to the Nuremberg proceedings, he shows how, during the trials against Gustav Krupp and officials of the I.G. Farben Corporation, the prosecutors did everything to put in the spotlight the individual representatives as well as their companies. These efforts did not remain without consequences and directly influenced the recent preparedness of Swiss banks and German industries to conclude reparation settlements with victims of war crimes from which they benefited financially during World War II.

In spite of this positive development, Clapham acknowledges that corporate and state responsibility remained excluded from the ICC Statute. The closest the conference on the Rome Statute came to including corporations was a text suggestion that directors as well as their companies could be prosecuted if the crime committed by the director was committed on behalf of and with the explicit consent of the company and in the course of its activities. Although this proposal was finally rejected, its language found its way into the new texts on terrorism, such as Security Council Resolution 1373 and the new Draft Convention on Terrorism.

In her contribution on the ICC's powers to ban the use of child soldiers in armed conflict (Chapter 14), Julia Maxted also stresses the limitations of the ad hoc tribunals and the ICC in protecting basic human rights and restoring peace and security. By describing the many factors contributing to this problem, she shows that it would be naïve to think that the complex reality can be reckoned with by relying too much on one specific in-

strument. Maxted points out how the severity of the child soldier problem in part results from the characteristics of conflict in which chaos and suffering have become strategic objectives and armed groups regard the use of children as a cheap and effective means to reach these goals. The child soldier problem is also influenced by the poor economic conditions of many children living in conflict zones. The offer of food and clothing is often sufficient to induce participation in guerrilla armies.

The continuing deterioration in livelihood security, social cohesion and capital is caused not only by conflict but also by recent macroeconomic policies and the HIV pandemic. Therefore, an effective prohibition on involving children in hostilities cannot be reached just by holding particular offenders personally accountable before a tribunal. Broader policy intervention tools should be used too, including increased control on the trade in diamonds and other minerals, the encouragement of small arms moratoriums, the restoration of law and order, the resettlement of former combatants, and, over the long run, provision of the education and employment opportunities that would discourage children and young people from reverting to violence.

Although from a different perspective, Cees Flinterman comes to the same conclusion in Chapter 15. Elaborating on Clapham, he underlines the limited judicial scope of the Rome Statute, which is still focused on grave human rights violations during wartime, in spite of the fact that a growing intersection between international human rights law and international humanitarian law can be observed. The most prominent example is the de-linking of the concept of crimes against humanity from the war nexus requirement in the jurisprudence of the ICTY and the ICC Statute.

Flinterman observes that the scope of the ICC and its jurisdictional powers will remain limited as a result of the continuing refusal of major countries such as the United States and China to ratify the Rome Statute. The road towards a real universal human rights court remains a lengthy one and the ICC may be regarded as only a first important step in that direction. Apart from that, Flinterman warns that an over-reliance on the instruments of international criminal justice increases the risk of a disproportionately large share of the international community's available resources being used for reactive rather than proactive strategies geared towards addressing the structural causes of human rights violations. According to Flinterman, the ICC should be accompanied by measures directed at an increase in the funding of preventive human rights mechanisms such as the UN High Commissioner for Human Rights in Geneva. At the very least, the court's functioning should not result in a decline in other regional and international mechanisms trying to protect universal human rights norms, values and institutions. In fact, existing supervision

mechanisms such as the UN Torture Committee could even complement the work of the ICC by investigating and producing evidence.

A vast amount of literature and commentary concerning international criminal justice has preceded the publication of this volume. The contribution of this volume comes with its interdisciplinary approach to the many different aspects of international criminal accountability, within a political as well as a legal context. This book does not pretend to be a definitive or complete account of the contribution that international criminal justice can make to the protection of human rights and peace and security. It would be impossible to offer an in-depth analysis of every aspect of this topic in just one volume; moreover, it is far too early to generate definitive conclusions on the basis of still limited experience. Indeed, despite its high profile, international criminal justice has been implemented in only a very few cases so far.

None the less, on the basis of the experiences already acquired, at least some conclusions can be drawn. As Ramesh Thakur re-emphasizes in the closing chapter, retributive justice is not, by definition, the only road to peace, stability and the protection of human rights. Sometimes, restorative justice through truth and reconciliation commissions may offer a better solution to fractured societies recovering from atrocities. Elaborating on this, an even more important conclusion Thakur draws is that, whatever the choice, it can never be made without consulting the country involved, ''not the least because it is that country that paid the price in the past and will have to live with the immediate and long-term consequences of the decisions made''.

Notes

1. The ICC was established not on the basis of a Security Council resolution but on the basis of a statute approved during an international diplomatic conference in Rome in 1998.
2. See also David P. Forsythe, *American Exceptionalism and Global Human Rights*, Lincoln: University of Nebraska Distinguished Lecture Series, 1999; Forsythe, ''US Foreign Policy and Human Rights: The Price of Principles after the Cold War'', in David P. Forsythe, ed., *Human Rights and Comparative Foreign Policy*, Tokyo: United Nations University Press, 2000, pp. 21–48.
3. Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice*, London: Penguin, 1999, pp. 301–302.
4. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston: Beacon Press, 1998, p. 26.

United Nations University Press
United Nations University, 53-70, Jingumae 5-chome,
Shibuya-ku, Tokyo, 150-8925, Japan
Tel: +81-3-3499-2811 Fax: +81-3-3406-7345
E-mail: sales@hq.unu.edu
General enquiries: press@hq.unu.edu
http://www.unu.edu

United Nations University Office at the United Nations, New York
2 United Nations Plaza, Room DC2-2062, New York, NY 10017, USA
Tel: +1-212-963-6387 Fax: +1-212-371-9454
E-mail: unuona@ony.unu.edu

United Nations University Press is the publishing division of the United Nations University.

Cover design by Joyce C. Weston
Printed in the United States of America

UNUP-1100
ISBN 92-808-1100-2

Library of Congress Cataloging-in-Publication Data

From sovereign impunity to international accountability : the search for justice in a world of states / edited by Ramesh Thakur and Peter Malcontent.
p. cm.
Includes bibliographical references and index.
ISBN 9280811002 (pbk.)
1. Crimes against humanity. 2. Criminal liability (International law)
3. Sovereignty, Violation of. 4. International criminal courts. I. Thakur, Ramesh Chandra, 1948– II. Malcontent, Peter.
K5301.F76 2004
345′.0235–dc22 2004007427

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Peter Malcontent • Paul G. Lauren • Michael D. Biddiss • David P. Forsythe • George J. Andreopoulos • Michail Wladimiroff • Christine Chinkin • Bert Swart • William A. Schabas • Helen Durham • Madeline H. Morris • Kingsley Chiedu Moghalu • Geoffrey Robertson • Andrew Clapham • Julia Maxted • Cees Flinterman • Ramesh Thakur

"The last century has seen the role of law and justice in governance extend beyond the realm of individual nations. Its significance, both regionally and globally, is illustrated by the developments made in international law, especially with regard to the recognition of international human rights, universal jurisdiction and additional international crimes. However, the significant advances with regard to the international recognition of humanitarian law and the ending of impunity for war criminals stand in real danger of being reversed…"

From the Foreword by Justice Richard J. Goldstone

"One of the functions of criminal law is to serve as a collective memory of past injustice. A criminal trial brings past suffering into public knowledge. It may thus enable a victimized community to deal with trauma and, perhaps, to create the conditions of future social life. But recording past injustice and creating the conditions of national reconciliation are not always best realized through criminal law. Evidence available, even of massive violations, may not always fulfill the formal criteria for criminal accountability. The way from the opening of a mass grave to proving a political leader responsible is long and complex, and success is by no means ensured. In cases like this, a criminal trial may not always provide the best instrument for memory and healing - especially if the leader must be released because of the lack of formal evidence. On the other hand, if releasing the leader is excluded at the outset, then the legitimacy of the trial may be questioned..."

From the Preface by Martti Ahtisaari

From Sovereign Impunity to International Accountability confronts these and other challenges by exploring the changing political and human rights context that gave rise to the international norm of individual criminal accountability. It brings together a preeminent group of experts to explore the progress, scope and controversies of international accountability.

Ramesh Thakur is the Senior Vice-Rector of the United Nations University, Tokyo. **Peter Malcontent** is a researcher and lecturer at the Netherlands Institute of Human Rights (SIM), Utrecht University, Utrecht.

Book information:

ISBN 92-808-1100-2; 360pp; US$33.00

Order from:

United Nations University Press

53-70, Jingumae 5-chome, Shibuya-ku, Tokyo 150-8925, Japan
Tel +81-3-3499-2811; Fax +81-3-3406-7345
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