International Legal Accountability and the World Order: Book Review of Geoffrey Robertson's *Crimes Against Humanity: The Struggle for Global Justice*

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Geoffrey Robertson's book, originally published in 1999 and updated in 2007, is an in-depth survey of the history and present state of the world legal order. Through telling the story of human rights from the American and French Revolutions to the Universal Declaration of Human Rights (UDHR) and up to the modern era, the author offers a brilliant insight into the evolution of human rights law as well as international criminal law. According to him, this evolution is not linear: Robertson demonstrates that the search for international morality and rule of law was and still is a process full of impediments. The author labels the Nuremberg and Tokyo trials as historic, noting that they marked the beginning of a new era in global legal thinking by a) recognizing individual's rights vis-à-vis the state, and b) recognizing state's obligations vis-à-vis international law. The judgment of Nuremberg, which "created an international criminal law to punish the perpetrators of crimes against humanity,"[1] provided the base of many clauses of UDHR and was also the driving force behind the establishment of rules of war. Robertson defines international criminal law as an independent and universal jurisdiction aimed to prosecute those that commit crimes "…so heinous that it is 'against humanity.'"[2] Such crimes include genocide, mass murder, systematic torture as well as warfare and terror.

The principal storyline of the book revolves around how Nuremberg altered the understanding of impunity and the repercussions that should follow state-sponsored murders. If before, the discussion used to be about how democratic and autocratic states respond differently to international law, then today the question is about how any sovereign state – no matter liberal or rogue – adheres to the world legal order. The author considers the revival of the legacy of Nuremberg through two unprecedented cases. He looks at the history of war from the Hague and the Geneva Conventions to the Rome Statute of 1998 and the creation of International Criminal Court (ICC). Robertson labels the Rome Statute as a major achievement of the late 20th century because the document asserts that it is a *moral imperative* of the adherents of the law to end impunity and exercise criminal jurisdiction over perpetrators.[3] In addition to this, the author tells the stories of the arrest of General Pinochet in 1998, the war crimes in Yugoslavia and Rwanda, and the Lockerbie agreement. As Robertson outlines in the prologue, he wants to build an argument for a millennial shift from appeasement to justice as the principal driving force of the current world order.

In a way, Robertson's book serves as a guideline. His purpose seems to be to show the readers how important it is to learn lessons from the past in order to avoid future tragedies. What drew my particular attention in the book is Robertson's overt criticism of the modern-day liberal institutions, which, according to him, give a lot of degree of leeway to global aspiring hegemons. Most crimes against humanity, the author notes, are committed by "professional soldiers, blessed by religious leaders and tacitly approved by governments."[4] Robertson's assessment of the inefficacy of current international organizations, which stems from their deeply flawed delivery and

enforcement mechanisms, is astute. As history has demonstrated, "the endemic failure [of the UN] to allow for criticisms of its own members" has been a major impediment to effective decision-making. Often, judgement of these institutions is wildly biased and diluted by the interests of the superpowers.[5] Robertson brilliantly manages to unveil the unpleasant image of these international legal organs.

The impulse to find international morality predates modern-day liberal institutions. The League of Nations, which, in the author's words, was too conservative and "diplomatic," sought to bring people to the same table and was one of the first attempts at establishing a global platform for states to discuss international morality.[6] After the creation of the UN, it became clear that "a more permanent international justice system" was needed.[7] After the Nuremberg and Tokyo trials, the UN made a reference to potential creation of an "international penal tribunal," though the project never came to completion due to the Cold War.[8] Australia's Prime Minister, Dr. H.V. Evatt, proposed the European Court of Human Rights, asserting that even democratic governments could and should not be trusted with the protection of the rights of individual citizens. It became clear that finding an overarching system of justice that possessed power higher than the sovereignty of each state was gaining more momentum, and that the search for a "world constitution" was becoming more prominent on the contemporary political agenda.

Robertson criticizes the internal bureaucracy of the UN and the organs codified by the UN Charter, such as the Human Rights Commission (HRC). According to him, the HRC turned a blind eye to some of the major human rights violations of the time, such as: The CIA's provocations in Chile and the U.S. government's sponsorship of the military coup, the mass rape of up to 300,000 Bangladeshi women throughout Pakistan's invasion, and others. Robertson underscores that if the HRC is to ever become credible, it needs to address major structural problems. For example, it would have to get rid of the so-called experts who, in fact, are the "mouthpieces" of certain governments.[9] The HRC instrumentality is flawed exactly because in lieu of independent experts, the fifty-three members were representatives of governments. This allegiance is why they were committed to neutrality instead of taking clear stances — an issue Robertson deems deeply problematic. The HRC would also have to meet more often throughout the year and manage to cut ties with the UN Secretariat to gain some independence (as the budget and structure of HRC are dictated by the Secretariat). The HRC cannot pressure states to perform their duties due to the fact that there are no real legal obligations. This lack of substance is why the behavior of the superpowers of the time was often veiled "in the language of legality" during the Cold War.[10] For example, the U.S. justified its invasion of the Dominican Republic in 1965 by asserting that it was serving the regional democratic rule, whereas the "Brezhnev Doctrine" of 1968 was formulated to frame the Soviet invasion of Czechoslovakia as the former giving "fraternal military assistance" to the latter.[11] The absence of a binding force allowed the powerful states to "bend the law" in a way that suited their national agendas and interests.

The utter infringement of the UDHR by the states that were supposedly most in support of its creation is an indictment of the nature of the document. The UDHR was never legally binding; it only possessed the power of a declaration, or "principles without powers of implementation."[12] It is

interesting to note that it was the totalitarian and autocratic states, such as the Soviet Union and its puppets, that opposed the idea of making the UDHR a binding document with the power of enforceability, whereas democracies such as Britain and Australia were in favor of it. Robertson highlights that the major drawback of the declaration was its "coy phraseology [which] conceals the awkward fact that this proclamation lacks legal force."[13] Therefore, the big question is whether or not the UDHR can be recognized as having the same force as international law. International law comprises official, legally binding treaties, which should show "high level of compliance" in order to maintain credibility.[14] The source of international law, besides treaties, is ratifications passed by governments. While international law requires consent of states, the UDHR compliance is optional, which turned its virtues into vices. This difference in consent does not mean, however, that international law always upholds the cause of human rights: some doctrines, such as diplomatic immunity and non-compulsory submission to the ICJ, continue to damage the principles laid out by UDHR. In addition, politics also get in the way of the high principles of judicial independence. Some examples given by Robertson include Russia, where two constitutional court judges were pressured to resign after making critical comments about the government; and Gambia, where three judges were dismissed by the President because of their decision to take up "politically sensitive cases."[15] Customary international law, Robertson notes, rests on state practice on the one hand and *opinion juris* on the other. It is exactly this "state practice" component that has been the most problematic source of international law: drawing legal measures from "practice" that serves the interests of the state will certainly not produce a set of laws that are fair.

Additionally, a point that I found to be extremely important is how international Westphalian law does not apply to transnational corporations and other non-state actors, some of whose "…global activities generate more product and greater influence than many UN member states will ever possess."[16] Yet another drawback of international customary law is that it sees war as a legitimate tool for enforcing a country's national security policy. Robertson heavily criticizes this aspect as well, noting that in the future, war should be deemed as "crime of aggression" without the approval of Security Council or international law.[17]

However, how can the decisions of the Security Council (UNSC) be trusted, since it also, in and of itself, is a largely politicized body? The "Big Five" of the UNSC that Robertson talks about are the ones in charge of the actual UN decision-making. We have seen what happens when a particular human rights violation issue does not lie on the radar of the five permanent member states. An example of this is the Rwandan genocide, which the UNSC not only disregarded but also became partially responsible for as its troops perpetuated the violence.[18]

The traditional U.S. view of international law, Robertson rightly argues, is that it stands above it; therefore, throughout history we encounter cases where the United States or other superpowers abstain from ratifying certain treaties "until the Court was operating to [their] satisfaction."[19] According to the author, considering all this, the Rome Statute is a major achievement of the human rights movements, as it best deals with the "*realpolitik* of state power."[20]

Robertson's arguments regarding contemporary liberal institutions potentially

undermines the possibility of peace. At times, the author seems too pessimistic about the role of these organizations, to the point where he devalues the purpose for which they were created. Yes, the institutions and their structural frameworks are flawed, but this does not necessarily undermine their merit in the grand scheme of things. It is better to live in a world where these organizations exist, however flawed, than in a world where they do not. Robertson also seems to be idealistic at times: even if the judicial order lives up to his standards, the Nuremberg dilemma stays unresolved, thus leaving us with the same question of who to prosecute and who to release. All in all, *Crimes Against Humanity: The Struggle for Global Justice* is a must have for scholars wishing to learn about the possibilities – and limits – of legal accountability at the global level. Its incredible depth and breadth provide decades of historical analysis, and urges the audience to contemplate the trajectory of the search for international morality.

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[1] Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New Press, 2007). 85.
Note: page numbers refer to those from the online edition.
[2] Robertson, 12.
[3] Robertson, 580.
[4] Robertson, 894.
[5] Robertson, 125.
[6] Robertson, 77.
[7] Robertson, 84.
[8] Robertson, 576.
[9] Robertson, 125.
[10] Robertson, 105.
[11] Ibid.
[12] Robertson, 86.
[13] Robertson, 93.
[14] Robertson, 164.
[15] Robertson, 213.
[16] Robertson, 228.
[17] Robertson, 302.
[18] William C. Strong, "The Failure of the United Nations Assistance Mission in Rwanda: A Dearth of Intelligence." (American Intelligence Journal 37, 2020).
[19] Robertson, 576.
[20] Robertson, 578.