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Effective Strategies for Protecting Human Rights: A Conference Engaging the International Community

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Effective Strategies for Protecting Human Rights: A Conference Engaging the International Community



by Cleveland-
Marshall Professor
of Law
David Barnhizer

Human rights protection needs teeth. And those who work in the disparate field of human rights need to see the system more comprehensively and strategically. Far too often, political issues interfere with enforcement of human rights laws and allow violators to hide behind the unwillingness of national governments to take action to enforce existing laws against human rights violators. Lack of commitment to human rights enforcement or timely preventative or intervention actions have led to violators being left unpunished for torture, rape and genocide. This failure of governments means that there is a lack of deterrent power sufficient to inhibit potential human rights violators who know they will not be legally pursued after a conflict has ended.

The April 2000 Human Rights Conference at Cleveland-Marshall that I coordinated brought together the experience of a diverse range of leading human rights advocates and activists to explore more effective strategies for protecting human rights. Many of the strategies against violators emphasize private action that does not depend on the politicized policy decisions of national governments, including the United States. The three-day meeting also considered the uses and limitations of international fora to prosecute violations.

The driving premise of the conference was that we have had significant experience with human rights violations—and with the limitations inherent in our attempts to prevent violations and to inhibit actors from committing even worse atrocities. We have also sought to punish those who cannot be otherwise controlled. From these wide ranging experiences we are at the point where it is

important to extract lessons as to what works and what doesn't. This assessment includes the need to understand how the system can be more effective in preventing human rights violations, how to mitigate the worst effects if they cannot be prevented, and how to create the best strategies for sanctioning violators.

Part of the analysis used in the meeting accepts that we need to become much more sophisticated regarding context-specific strategies for protecting human rights. Implementation of human rights is central. But effective implementation requires that human rights strategies take the characteristics of cultures into account, as well as the strengths and weaknesses of rights violators and prospective national and international enforcers. No sound strategy for preventing or addressing violations of human rights can succeed without considering the values, strengths, and vulnerabilities of the specific nation or leader being targeted. Obviously, dealing with China's human rights violations is not the same as stopping human rights violations in Grenada.

A prevention and enforcement regime must be built that increasingly depends on the capabilities of national legal institutions, relying on action such as Spain and Chile have taken in the Pinochet matter. This does not reject the importance of international institutions and the processes of international law but recognizes the political and policy-driven limits of such institutions. Similarly, in many instances powerful nations ignore serious human rights violations because the violator is an ally or important trading partner. The use of national laws as a basis of

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Goldstone, Professor David
Goshien, Ambassador
David Rawson

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the jurisdictional rights of nations to protect their nationals from abuses in other nations, as well as more general claims to national jurisdiction based on the right to prosecute those who commit crimes against humanity, creates a much greater chance of "no safe haven" for violators. The denial of any safe haven may inhibit at least some of the potential violators. Slobodan Milosevic may never want to leave Serbia or Saddam Hussein, Iraq, but many potential human rights violators might think twice if other countries and victims became serious about taking the violators' property and foreign bank accounts and denying them access to comfortable safe havens where monsters such as Idi Amin can live out their lives in secluded luxury.

Among the speakers at the conference were Noam Chomsky, Institute Professor of Modern Languages and Linguistics at the Massachusetts Institute of Technology, and Justice Richard J. Goldstone of the Constitutional Court of South Africa and the law school's Seventieth Cleveland-Marshall Fund Visiting Scholar. Professor Chomsky spoke to the issue of "Human Rights Priorities and Responsibilities for Citizens," while Justice Goldstone, who also served as chief prosecutor of the United Nations war crimes tribunal for Bosnia, addressed the issue of "International Jurisdiction to Prosecute War Crimes."

Professor Chomsky argued that "There are some simple principles that enter into setting human rights priorities for citizens—meaning members of a political community that allows citizens a degree of participation in policy formation. The principles I have in mind are virtual truisms, so a few introductory words will suffice. The first is that people are responsible for the anticipated consequences of their actions (or inaction). For citizens, that responsibility extends to the policy choices of their own state, to the extent that they can

affect them with relative impunity; the responsibility is far greater in a functioning democracy than in a military dictatorship, for example. The second truism is that if profession of high principles is to be taken seriously, these must be applied to oneself, not only to official enemies or others designated as unworthy in the prevailing political culture."

He concluded that "It is, however, hard to miss the fact that throughout history, and in virtually all societies, they (e.g. principles) are com-



Professor David Goshien, Eric Carlson



Ann Goldstein, Malini Mehra

monly honored in the breach. We have witnessed that familiar pattern again in the terminal year of the twentieth century. In a display of exuberance with few historical precedents, Western intellectuals and political figures lauded themselves for selflessly upholding 'principles and values' for the first time in history, recognizing that no decent person can stand by and watch the systematic state-directed murder of other people as their states bombed an official enemy under the exalted leadership

of an idealistic New World bent on ending inhumanity, and so on in an impressive torrent. At the very same time," he stated, "the familiar silence reigned as they continued to provide their crucial support for comparable or worse crimes. History suggests that nothing different should have been expected. Moral truisms inform us that the reactions should have been reversed, and that the self-image constructed is less than impressive — and with great import for the future, in the light of the distribution of global power."

Justice Goldstone suggested that "One of the consequences of the horrors of the Holocaust was the recognition that the way in which citizens of any State are treated is the business of other States and of the international community. There were two important related developments [derived from this recognition]. The first was that national sovereignty was no longer inviolable in the field of human rights. The second was the birth of universal jurisdiction which enables national courts and international courts to prosecute the most egregious international crimes wherever and by whomever they may have been committed. An illustration of national courts exercising that jurisdiction is the Pinochet case; and at the international level, the UN war crimes tribunals and the movement towards establishing a permanent International Criminal Court."

The numerous other presenters offered an amazing array of insights into ways to improve human rights efforts to prevent violations as well as to sanction violators when human rights crimes do occur. Kate Robertson, Research and Information Specialist with the U.S. Commission on National Security/21st Century, discussed the critical issue of "Protecting Civilians in Conflict and Post-conflict Reconstruction." Richard Wilson, Professor of Law and Director International Human Rights Clinic at American University, warned about the necessity of "Avoiding Vigilante Justice: Strengthening the Right to Defense

in International Criminal Tribunals." Brian Concannon, who works in Haiti with the Bureau des Avocats Internationaux, is part of a group of lawyers funded by the Haitian government who assist the judiciary with human rights cases, mostly from Haiti's 1991-94 dictatorship. Richard Herz, Litigation Director for Earth Rights International, emphasized his experience in the use of private law aimed at "Holding Multinational Corporations Accountable for Human and Environmental Rights Abuses: *Doe v. Unocal* (Burma), *Wiwa v. Royal Dutch Petroleum* (Nigeria), *Bowoto v. Chevron* (Nigeria) and *Bano v. Union Carbide* (India)". Michael Ratner, Vice President of the Center for Constitutional Rights, discussed how he and others at the Center were "Using Domestic Courts to Prosecute Extra-territorial Human Rights Violations." Peter Takirambudde, who is Director of Human Rights Watch-Africa, concentrated on "Building the Record of Human

Rights Violations in Africa—the Functions of Monitoring and Investigation." Ann Cooper, Executive Director of the Committee to Protect Journalists, reported her efforts in resisting human rights violators who were "Targeting Journalists to Prevent the Dissemination of Knowledge of Human Rights Violations."

The presentations listed above are just a sampling of what was covered in this rich three-day event. The speakers' insights were so vital and exciting that Ashgate Publishing, a UK-based publisher, has agreed to publish two books derived primarily from the conference presentations. The books will concentrate on the principles and law involved in human rights enforcement including private civil remedies and criminal prosecution; and on investigation, monitoring and education strategies that offer the greatest hope for significant improvement in human rights protection. ■



Justice Goldstone

Missing Pictures: We Need Your Help

There are several gaps in the gallery of alumni composite pictures on the second floor of the Atrium. Can you help us replace the missing class pictures? For the Cleveland Law School we are without the graduating classes of 1899-1910, 1920, 1924, and 1928. For the John Marshall School of Law, we are missing the years 1917-1919, 1922, 1924, 1928, 1929, 1932, 1938, and 1941-1946. For the Cleveland-Marshall College of Law we are missing composites of the classes of 1972-1975, 1977-1980, 1982, and 1991 to the present. If you can fill any of these gaps, please call Louise Mooney at 216-687-6886 or e-mail her at Louise.Mooney@law.csuohio.edu.

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