

2. Human Rights as a Fundamental Standard of Post-Conflict Rehabilitation

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Raising children can be quite a philosophical experience for open-minded parents. Ethics and morals, standard setting, firmness and leniency, attitudes and purpose, all matters related to personal and social behavior are constantly questioned. Hence, they must be reappraised and explained according to changing or everlasting standards, and taught according to an instinctive or educated common sense in tune with modern times. And so it was at the end of World War II in the Hague, today one of the world's better known centers of law and justice, where my parents were on diplomatic assignment. As they mingled outside of the foreign community with couples trying to rebuild their lives and their country, sometimes literally out of the rubble, they came to be aware of an intimate difficulty many a Dutch family was facing. Throughout the war years, when they had had to face ruthless occupation and Nazi retribution, parents had taught their children to lie and when possible to cheat and steal food and ration tickets. Now that the war was over, those parents faced a new quandary: how were they to get their children back on the right moral track? How could they bring about a change of instincts and make the young understand that the change in environment also meant a change of paradigm?

Conflicts and Their Aftermath

The same dilemma, to be sure, applies to all post-conflict societies and their attitudes towards obedience to rules, respect of the law and of human rights. However short open conflicts have come to be in modern times, they are invariably the result of long mounting tensions in oppressive political frameworks that tend to lead to behavioral patterns of egoism and deceit. As simmering resentments are brought to the boiling point, the open violence of ensuing war brings out the worst of human nature. And as the old and recent Balkan wars proved yet again, the longer the conflict lasts, the more crimes and inhumanity don the apparel of normalcy.

Inevitably, the conflict will have caused devastation, sorrow and grief, as well as new forms of anger and calls for revenge. Where emotions will not have been numbed by the sheer weight of the drama – as may be the case in the aftermath of open genocide, such as in Cambodia and Rwanda – they will have come to be exacerbated by feelings of hate, that do not readily subside when the guns are silenced. Be that as it may, the end of open hostilities is usually accompanied by a new balance of power between opposing forces, ranging from outright obliteration of one warring party to a new status quo, however unstable, where opposing forces and communities must establish a new *modus vivendi*, by themselves or through international administrators and under the guard of foreign military and police units.

In most cases, the end of open conflict would not mean the end of violence, as a continually troubled and unsafe environment would slow down the drive towards reconstruction, rehabilitation and normalization. Corruption and the spread of organized crime is facilitated by weak state structures and an abundance of unemployed, of former warlords and strong men. This usually gives rise to the spread of alternative providers of security, i.e. private security companies of all kinds, many of which attract shady characters whose activities go largely unchecked.

That is when new points of reference, social frameworks, and behaviors are called for. At ground level, individual priorities change, as do the medium and long-term perspectives of the whole social body. In the upper echelons, community and political leaders establish new objectives and develop a different outlook on the future. The new tasks at hand range from tending to the sick and fending off epidemic dangers, caring for and feeding the surviving and the displaced, to physical reconstruction of housing and of critical infrastructures, as well as jump-starting the economy. Short term objectives such as receiving humanitarian and economic assistance from abroad, as well as definitively disbanding and disarming the defeated forces and the paramilitary are paralleled by longer term goals such as setting up new local authorities and institutions, police forces and community services, resuming education, and the like.

Human Rights As Legal Obligations

But among these pressing priorities, there is one heralded objective which only seldom benefits from sustained and overall attention: that of the upholding of human rights within a stabilized and reinforced legal and judicial system, not to mention a reinvigorated moral framework. Almost invariably, lip service will be paid in the public discourse to this endeavor, but just as commonly, the level of commitment of the decision-makers and officials remains lacking. On the one hand, a widespread feeling holds that contrition and remorse for past misdeeds is superfluous in the face of what has been suffered at the hands of the enemy. This, in turn, distracts from confronting the issue of assessing and prosecuting past criminal behaviors. More often than not, suspected criminals are revered as heroes by large portions of public opinion, and political leaders do not dare alienate some of their own supporters by turning against those wanted persons. As a consequence, general notions about justice and human rights keep being trivialized. On the other hand, the redefinition of acceptable behavior patterns and the enforcement of laws aiming at the protection of individuals and minority groups remain lacking, since the avowed objectives of the empowered elites are the consolidation of power structures, rather than full compliance with democratic rules and the furthering of a balanced 'pursuit of happiness' by all citizens.

Consistent political pressure from the international community, to be sure, can and does lead to progressive adjustments beneficial to the whole of the social body. But to accelerate the pace of progress and to bridge the gap between verbose commitments and the effective application of the full set of human rights, what is called for is a resort not so much to morals and idealism, but rather to utilitarianism and self-serving efficiency.

True, such an approach may seem irrelevant when it comes to defining and setting up the rules. It may seem that once the rules have been adopted, the rest is simply a matter of enforcement, and hence, of sound coercion and accountability. After all, human rights are a well-known body of law, and lawyers and jurists have written extensively on the sub-

ject. Little has been left unsaid as to the applicability of human rights and refugee law versus international humanitarian law, or the specific laws that apply in different types of post conflict situations, such as open or unacknowledged occupation, peacekeeping by UN or foreign forces, or other such extraordinary circumstances. Invariably, legal experts will be asked to define which legal frameworks and conventions apply. And they will respond with savvy that the Hague Regulations – the ancestors of the Geneva additional Protocols – are nowadays considered customary law, whereas *'the rules on occupation of the Fourth Geneva Convention are that part of international humanitarian law which is closest to human rights law'*⁶⁵. In addition, *'with the strict distinction between the law of war and the law of peace gradually vanishing (...) the classic law of armed conflicts seems to be supplemented or even modified by human rights law'*⁶⁶.

To the lawyer, whatever the circumstances, there are no voids, since occupiers, liberators and international peacekeepers, for instance, must always abide by the one or the other legal system, and are under constant obligation to respect and observe human rights to the extent that those rights have crystallized as rules of customary international law⁶⁷. And whenever the most powerful of victors claim that special circumstances allow for the bending of the rules, or that they act in a legal no man's land of sorts – the US attitude towards the Taliban and suspected terrorists held at Guantanamo is a case in point in this respect – expert opinion is quick to disagree and convincingly prove the contrary⁶⁸.

⁶⁵ H.-P. Gasser, 'From Military Intervention to Occupation of Territory: New Relevance of International Law of Occupation', in: H. Fischer, U. Froissart, W. Heintschel von Heinegg, C. Raap (ed.), Crisis Management and Humanitarian Protection (Festschrift für Dieter Fleck, Berliner Wissenschafts-Verlag, 2004) 156

⁶⁶ A. Zimmermann, 'Role and Function of International Criminal Law in the International System After the Entry into Force of the Rome Statute of the International Criminal Court', in: German Yearbook of International Law, N045, 2002, 56

⁶⁷ C. Tomuschat, 'The Applicability of Human Rights Law to Insurgent Movements', in: Crisis Management and Humanitarian Protection, 573

⁶⁸ See, for instance, M. E. O'Connell, Crisis Management and Humanitarian Protection, 405-26

There is a sound logic to this quest for an understanding of the relevant legal frameworks and their contours, based on institutional views as to laws and their application. The purist relies on the principle that once the law has entered into force or has been recognized as applicable, it is not to be bent or trivialized by the commoner. Only the judge or legislator may interpret or change it, whereas all others must simply – but fully – comply with it. In other words, once the legal debate is conclusively solved, the framework of reference is established and all can ensue smoothly. As to enforcing the law or worrying about compliance – that is left to others, without much energy being spent on the problems that this follow-through may entail. More often than not, the jurist's reference to enforcement comes only at the end of the exposé, as a convenient conclusion to a theoretical study⁶⁹.

Implementation and Its Means

This disconnection between legal truths and their translation into reality is unsatisfactory. It is one thing to ascertain in which circumstances what body of law, what convention, what article applies, what tribunal and which authority take precedence. Yet, once all of these essential logical and theoretical questions are cleared – usually by experts far removed from the scene of sorrow and the scent of soil and toil – there remains an unanswered and fundamental question: how does this body of thought translate into individual deeds, into personal action and restraint, into human behavior and dignity? That is a question, which cannot be answered by jurists alone. Much rather, it needs to be addressed by politicians and practitioners, platoon, group and local leaders, by priests and religious figures, and also lay commanders, teachers, trainers and anyone with a parcel of recognized authority within the overall civil society. And those entrusted with such a responsibility should be convinced not only by the law per se and the institutional obligation of abiding by the rules, but perhaps even more by the wisdom and usefulness of applying it or abiding by it as a tool for reconciliation and as a recipe for lasting peace. Indeed, an effective and generalized rule of law is usually the best

⁶⁹ That happened to be the case in almost half of over twenty papers and articles read in the context of the present study.

way of fulfilling the long term objectives for which a resort to arms was often first seen as unavoidable – i.e. to protect one's own civilian population and institutions, and the right to social and economic development.

This is where a rather more political scientist's and social manager's view should take hold. A lot more time and research should be focused on the means to implement human rights for the sake not of legal coherence, but for the immediate or long term good of the people concerned – the would be victims as well as the would be perpetrators. Indeed, the viability of the fledgling institutions and the quality of a peaceful future for a new society are highly dependant on such efforts. Just as for those Dutch children of yore, who had first been taught the skills of survival, and who had to revert to the morals of a peaceful society, the challenge is to bring to the wider number a new understanding of the value of self-respect through ethics and law-abidance. There is, in a way, a need for an aggiornamento of public conscience⁷⁰, that overarching moral framework which may be so disturbed in times of war, and which remains battered in unstable and corrupt societies.

At the same time, the question arises as to which human rights are to be observed more pressingly. These are many, and sometimes controversial as to their hierarchy, given the range of first (civil and political), second (economic, social and cultural) and third (peoples) rights that, in theory, have an equal claim to protection since the early 1990s⁷¹. But in practice, claiming that all rights are immediately applicable in a post-conflict society may well result in none being adequately protected⁷². In effect, there is a general, commonsensical tendency of all individuals to prioritize their needs and their rights, and those of others. Especially in a post-conflict phase, when so much must be reconstructed and recreated, it is only logical to proceed with pragmatism and a differentiated sense of urgency.

⁷⁰ M. Veuthey, 'Public Conscience in International Humanitarian Law Today', in: Crisis Management and Humanitarian Protection, 611

⁷¹ According to the Vienna Declaration and Program of Action on Human Rights, 1993.

⁷² N. White and D. Klaasen, The UN and the Protection of Human Rights in Post-Conflict Situations, Human Rights Law Centre, University of Nottingham, 2004

The Specifics of South Eastern Europe

Pragmatism commands that different solutions be found to different situations. Though they bear common trait, conflicts in Liberia or Rwanda, in Afghanistan or Iraq, in Columbia, Sri Lanka, Sudan or in various parts of the Caucasus have different origins and inner logics, and are influenced by different cultures. Re-establishing a sense for the value of justice and human rights must hence take different paths. In the case of South Eastern Europe, closest to our Euro-Atlantic scope, a particular set of idiosyncrasies must be taken into account. The heavy legacy of communist rule belittling individual rights, age-old hatreds, clan and ethnic dividing lines, as well as unabated claims to jurisdiction or independence all conspire to impede a reconciliation which is often neither sought nor desired. According to the findings of a symposium on the role of Human Rights in South Eastern Europe, held in Graz in June 2002⁷³, it must be noted, for instance, that in the Western Balkans, customary law and the kinship system plays a major role in the social order as well as in political life. Institutions and bureaucracy are widely mistrusted, and a wide network of clientism and nepotism often serves as an alternative for state regulations⁷⁴. There is a stubborn lack of confidence in what relates to human rights, which stems from a distrustful perception of the state and from the life-long experience of being treated as subjects, not as objects of government⁷⁵. Moreover and quite importantly, 'the winner takes all' is a common principle, which gives little room for constructive cooperation between conflicting interest groups. Indeed, more so perhaps than in other settings, post-war morality remains characterized by certain adoration for leading war criminals and the avoidance of the historical truth, itself replaced by a sort of ethno-ethics⁷⁶.

⁷³ W. Benedk/G. Rabussay, 'Symposium on Role of Human Rights in Post-Conflict Situation in South Eastern Europe', Europäisches Trainings- und Forschungszentrum für Menschenrechte und Demokratie, Occasional Paper no 7, Graz, June 2002.

⁷⁴ K. Kaser, 'Recent Post-Conflict History of SEE of Relevance for Human Rights', Graz Symposium.

⁷⁵ C. von Kohl, 'Cultural Aspects of Human Rights in the Balkans', Graz Symposium.

⁷⁶ Z. Puhovski, Graz Symposium.

Yet, there too, in the long run, a change of perceptions and beliefs must lead the way to lasting appeasement. But let's be realistic: a change of morals and social philosophy is too long term a goal to vie for it from the start. A pragmatic and utilitarian approach holds better chances of being successful. As a general rule, experience shows that long torn societies headed for stability and human development must deal with their past and go through a process of catharsis. As has been the case in Central America at first, and later in Africa, one useful step is the establishment of "truth and reconciliation commissions" establishing facts and unveiling wrongs. What must be sought above all is the collective as well as individual admittance of past crimes, and not punishment in all cases. Not every wrongdoer and criminal will be prosecuted and be made to pay, often simply because there were so many. But the psychological need for justice ingrained in every victim's mind has to be met with an open and valid process establishing who are the culprits on all sides.

This is particularly topical in present day Serbia-Montenegro, Bosnia and Herzegovina and Croatia, where governments seem to be slow in responding to the pressing requests of the War Crimes Tribunal in the Hague. Approaches long taken by certain governments, which simply await the voluntary surrender of the indicted, are not helpful in the least in this respect. That attitude can only reinforce the general underlying rejection by the relevant community of all reproaches and its inability to come to terms with wrong attitudes favoring crimes and public contempt for human rights⁷⁷. In this respect, the firm stance taken by the European Union and many a European country, that all Tribunal demands must be met before the European and multilateral future of these countries is cleared, represents an important contribution to the quickening of a reconciliation process based not on amnesia, but of reclaimed responsibilities. Indeed, it can be argued that the issue of the willingness to comply with the mission of the ICTY provides insight into the sustainability of

⁷⁷ Conversely, the recent surrender to the ICTY of Kosovo's Prime Minister Ramush Haradinaj, as soon as he received written notice of his indictment, set a good example, all the more so that it was followed by repeated appeals by Haradinaj to his followers to remain calm as he faces justice.

the overall reform process, especially if the criteria were to be weakened in the interest of a smooth integration into European structures⁷⁸.

Admittedly, reconciliation is in itself a painful process. On the one hand, at the level of the individual victims, pain and hurt must in all cases be acknowledged, and feelings of utmost rejection or unforgiveness must be respected, to avoid that the agony of loss be doubled by the frustration of feeling misunderstood and rejected. It is only once the full legitimacy of such feelings is accepted that an evolution towards appeasement and eventual reconciliation can take hold. On the other hand, however unfair it may be to the victims, amnesties may well have to prevail in many cases – without affranchising the amnestied from remorse. But prosecution and punishment must also follow for the leaders and the worst henchmen, lest the new social and legal order be viewed as basically flawed and made into a farce.

Paddling Through Muddy Waters

Another post-conflict dilemma, compounded by the fact that the situation is often that of a post-dictatorship society, is the way to deal with old regime veterans. Acceptance of the new institutions by the population depends on a very sensitive choice of changes to the existing system, providing for mechanisms for an effective control of power at all levels⁷⁹. Though the natural tendency of the new elite is to rely as much as possible on old opposition comrades and untainted neophytes considered as trustworthy, institutions and infrastructures usually could not do without experienced hands manning the administration. Hence, compromises must be made, and representatives of the old regime, though they should be screened as to their ability to abide by the new order of the day, are generally left at their posts. What is important here is, that these individuals must quickly be brought to understand and conform with new ethics and behavior, even though their ethics are often sure to be poor in the first place. Reliance on widespread opportunism will not

⁷⁸ M. Jazbec, Defence Reform in the Western Balkans: The Way Ahead, DCAF Policy Paper, Geneva, April 2005, 16

⁷⁹ U. Froissart, op. cit., 115-16

suffice. Specific, focused training as to the way to treat all citizens, especially member of minority communities, and avoid rampant corruption and nepotism is a task to be tackled at once.

A large but little noticed group, which usually thrives in post-conflict societies, is that of the numerous private military and security companies. That contracted personnel often counts a disproportional number of individuals tainted by old regime or bellicose ways, as well as large numbers of foreigners attracted by tense environments. In Iraq, for instance, private military companies today employ up to 45,000 staff, and represent the second largest contingent of the "coalition of the willing", after the US and before the UK⁸⁰. Though these private security companies undoubtedly render useful services and can contribute to a safer environment for those tasked with reconstruction work, they are also all too often left to themselves when it comes to rules of engagement, handling of civilians and suspected opponents, as well as, generally speaking, complying with the law and respecting human rights. Calls for effective regulation mechanisms for contracted security personnel are widening⁸¹. The primary responsibility for such a regulatory work lies with the UN and other international organizations, since national legislations will not adequately cover those post conflict areas where security contractors are mostly engaged. However, once this regulatory work is completed, compliance will have to be secured with the help of the international community and with as much forcefulness as necessary, lest these security companies slide into what would amount to a criminal underworld.

One other very complex problem facing post-conflict societies, linked to the application of human rights, is the way to deal with organized crime and terrorism. Human rights apply to the overall state and its inhabitants, and are crucial to the rapport established between people invested with

⁸⁰ F. Schreier and M. Caparini, Privatising Security: Law, Practice and Governance of Private Military and Security Companies, DCAF Occasional Paper No 6, Geneva, March 2005, 2

⁸¹ See, for instance: F. Schreier and M. Caparini, op. cit.,116-40; and C. Holmqvist, Private Security Companies, The Case for Regulation, SIPRI Policy Paper No 9, January 2005.

authority and the citizens. They are a solution, within the society, but to many – a disease of the system. Terrorism and organized crime, however, are of an intrinsically other nature. They pitch outcasts who reject all established orders but their own, and abide only by their own codes. These scourges must be fought by the community, i. e. the authorities as well as the population, who also bear responsibility for harboring them or otherwise not denouncing them. Particularly in the fight against terrorism, what is most problematic is that the natural tendency will be to suspend liberties, overlook human rights and repress rather indiscriminately, even though such counter measures usually further the cause of the terrorists. Inversely, being soft on organized crime – as societies in turmoil often are because of widespread corruption – will impede trust in the new institutions and darken personal outlooks for the future. Here, the answer lies in accelerated international cooperation, at best with the authorities of those democratic states, which remain keen to least restrict civil liberties and to uphold human rights in all cases.

The Role of the Media

Finally, an often overlooked, yet crucial factor to the building up of a culture of respect of human rights, dignity and stability is the role of the media. Today, the importance of a free media in a democratic society is well recognized. Since the early nineteen nineties and the first Iraqi conflict, the role of the media as an element of warfare – the "CNN factor" – is also well understood, and many military commanders undergo focused training to help them master the media war that is part of all modern campaigns⁸². In all cases, what is widely sought after as a support of the free media or as a countermeasure to the instrumentation of press people, is a strong deontology and a real freedom to maneuver. In post conflict societies, that should translate into the establishment of a free press protected from interference from political parties and authorities. At first, supporters of the old regime should be prevented from regaining control of elements of the media, and if state owned media remain acceptable, at least part of the media should be privatized⁸³.

⁸² C. H. B. Garraway, Crisis Management and Humanitarian Protection, 126.

⁸³ Ulrike Froissart, op. cit., 121.

Yet, this simple remedy will often not suffice to further the cause of human rights. Indeed, the press will generally have played a part in the lead up to the conflict. Indeed, it will have proven to be partial or even deadly, as has been the case at the peak of unrestrained nationalism during the Yugoslav wars, or with *Radio Mille Collines* in Rwanda. Hence, what is needed here, from the point of view of efficaciousness and a utilitarian approach to the furthering of the cause of human rights, is specific and wide ranging training for media professionals, with lasting help from abroad and heavy accents on not only the virtues of an independent press, but also on ethics, social history and philosophy, and the nature and the scope of human rights. It is easily acknowledged that training starts with training the trainers. In post-conflict societies, it should also start with the training of the media, as a means to counter nationalistic, aggressive and vengeful tendencies⁸⁴. Investing in this field should be seen as a priority, inasmuch as the media can serve as the main vector leading to a change of the public opinion's attitude towards the rightfulness and necessity of prosecution of criminals, the tolerance and respect of minority groups and the establishment of a truly democratic society.

Conclusion

Other approaches, other actions are sure to be needed to strengthen human rights, democracy and stability in post-conflict societies. Exploring such avenues of thought and implementation methods will long remain an unfinished task. Our purpose here could not have been to exhaust the subject, nor can it be to align ready-made recipes disconnected from local realities. But we will stress that in our view, furthering the cause of ethics and human rights must rely on more than idealism and legal expertise: it requires a pragmatic sense of efficiency and a call to the interests of the individuals, be they egoistical. In that sense, we need not re-

⁸⁴ For a compelling account of the work involved in supporting a free media, see: Eric Lehmann, Journal de l'après-guerre au Kosovo, Favre, Lausanne, 2000.

invent the diagnostics, but we can have a go at reinventing the remedies⁸⁵.

To some, focusing on the narrow issue of human rights in post conflict societies may seem to be of secondary importance. We would argue, however, that in today's world, and most particularly in the Balkans where recent war-related emigration is so prevalent, a large Diaspora of able and hard working professionals continue to await better times before returning home. Conversely, large numbers of youth would like to emigrate, not only for economic reasons, but deep within, because they feel they lack the moral environment which would enable an optimistic outlook on their future in their home surroundings. Establishing the standards that best guarantee everybody's human rights is, hence, the best way to reverse emigration flows and rebuild an ailing country.

⁸⁵ A view obviously shared by legal experts who are also practitioners of international humanitarian law and human rights, such as the members of the ICRC. See M. Veuthey, *op. cit.*, 638