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Book Review

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BOOK REVIEW

Crimes of War: What the Public Should Know Edited by Roy Gutman and David Rieff Legal Editor Kenneth Anderson

by Anne Theodore Briggs and Matthew R. Briggs*

"The chemical attack began a day later at 6:20 p.m. . . . Wave after wave of bombers . . . dropped a cocktail of poison gases: mustard gas, the nerve agents sarin, tabun and . . . VX, the most lethal of all. . . . The [Kurdish] townspeople had no protection and the chemicals soaked into their clothes, skin, eyes, and lungs. At least five thousand, and probably many more, died within hours. Many were poisoned in the cellars where they sought refuge - trapped by gases that were heavier than air." – "Poisonous Weapons," Gwynne Roberts

"Bosnian Serb soldiers wearing stolen UN uniforms and driving stolen UN vehicles announced over megaphones that they were UN peacekeepers and that they were prepared to oversee the Bosnian Muslim's surrender and guarantee they would not be harmed. Disoriented and exhausted, many Bosnian Muslims fell for the lie. . . . Those whom the Serbs got their hands on were killed by firing squad." – "Perfidy and Treachery," David Rhode

"Other Iraqi soldiers in that area of open ground made clear they were surrendering [to the Kurdish Pehsmarga guerillas] by laying down their weapons, kneeling on the ground and locking their hands behind their heads. Many were crying 'Allahu Akbar' (God is Great), pleading for mercy. . . . An Iraqi soldier with no weapon, and with his hands in the air, was shot and killed a few steps from me. Seven unarmed prisoners kneeling on the ground nearby were shot to death moments later. Individually and in small groups, every Iraqi soldier I saw outside the main building was executed. None had weapons, nor were they resisting or trying to escape." – "Hors de Combat," Kurt Schork

These quotations from *Crimes of War: What the Public Should Know* are a few examples of the extremes of human behavior in combat. They illustrate the difficulty in distinguishing legitimate acts of combatants from war crimes during periods of conflict. *Crimes of War* examines this tension in detail, through photographs and 140 alphabetically organized essays detailing the first-hand experiences of journalists, and provides commentary from experts on international humanitarian law, i.e., the laws of war. Pulitzer Prize-winning journalist Roy Gutman and freelance author David Rieff served as co-editors for the book, and Washington College of Law (WCL) Associate Professor Kenneth Anderson served as legal editor.

The book interweaves journalists' accounts with principles of humanitarian law. Each essay is categorized as a "Case Study," "Crime," or description of "The Law." The "Case Study" and "Crime" sections are the more gripping and gruesome parts of the book, sparing no detail in the descriptions of torture, murder, and other cruelties, often told from the perspective of the maligned victims. This perspective focuses on the violent acts themselves and the victims thereof, without examining the circumstances or motivations of the perpetrators. Although a more balanced perspective may have helped the reader to gain a fuller understanding of the issues, it is difficult to imagine mitigating aspects of the gross violations of international humanitarian law described.

International humanitarian law standards form the contextual basis of the legal analysis, focusing largely on the four

Geneva Conventions of August 12, 1949, and the two Additional Protocols of June 8, 1977. The Geneva Conventions address: "Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field," "Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea," "Treatment of Prisoners of War," and "Protection of Civilian Persons in Time of War," respectively. The two Additional Protocols extend these protections to wars of national liberation and civil wars. Although most states are parties to these and other agreements, states can claim individual exceptions or reservations to the Conventions, resulting in divergent application and enforcement of the provisions therein.

Lack of uniform application is a significant weakness of the Geneva Conventions and in many respects *Crimes of War* strongly criticizes the failings of humanitarian law. Most "Case Study" and "Crime" entries typically conclude with both a brief overview of the provisions of the Geneva Conventions applicable to the situation, and the author's view as to the prospect of preventing war crimes through the particular rule of law. Acclaimed journalist Sydney Shanberg expresses his frustration with legal technicalities in "Cambodia," an essay discussing three decades of continual atrocity: "[O]ver the years, the law has proved so poor a guide to the reality of human slaughter. For, whether you call the mass killing in Cambodia a genocide or simply a crime against humanity, it was the same by either name. It was a visitation of evil." Meanwhile, others, such as journalist Mark Huband in his essay "Rwanda—The Genocide," criticize the lack of enforcement of war crimes and reliance on tribunals as a healing salve. "[T]rials are a poor substitute for prevention... The Rwandan genocide could have been prevented had the outside world had the will to do so. . . . The legal basis for intervention was there. It was courage that was lacking."

The essays in *Crimes of War* consistently highlight the inability of legal obligations to restrain the brutal instincts of the human psyche in situations involving extreme threats or frustration. From his conversations with military professionals and scholars, Professor Anderson argues the "compulsion to follow the rules [of war] is not about law but has fundamentally to do with soldiers' professional identity as soldiers. . . . [Military historian] John Keegan said it best: 'There is no substitute for honor on the battlefield. There never has been and there never will be.' The compulsion to obey is not about justice, but about honor." Indeed, the variety of atrocities mentioned in *Crimes of War*, from mutilation, rape, and starvation, to less publicized war crimes of pillage and destruction of historical monuments, pose the broader question of whether international legal standards will be ultimately effective in shaping human behavior, or whether combatants, by virtue of situational extremes, will succumb to a tunnel vision of self-preservation impervious to conceptions of morality and decency.

Notwithstanding its shortcomings, the laws of war can have a discernable impact. In their respective essays, "Gulf War" and "Compelling Military Service," journalists Patrick J. Sloyan and Frank Smyth describe how General Norman Schwarzkopf "ordered perhaps the most ambitious effort to prevent war crimes ever conducted on a battlefield" during the 1991 Gulf War. Schwarzkopf trained every officer and enlisted soldier in the laws of war, and frequently requested interpretive decisions from the International Committee of the Red Cross to ensure that U.S. military operations would not be characterized as war crimes. Sloyan and Smyth's complementary discussions demonstrate one of the more optimistic perspectives offered by the book concerning the effects of international humanitarian law.

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person alone cannot make a difference, stating, “if you feel that you’re too small to do anything, then you’ve never been in bed with a mosquito.”

In response to a directed question from Professor Tigar, Guillaume Ngefa Atondoko described the role of international actors in exacerbating African wars. He derided the United States for claiming to support the rule of law in Africa while ignoring the suffering of more than 400 million people throughout the continent and warned that U.S. taxpayer dollars are used to support murderous policies abroad. As a response to this type of insidious foreign involvement, Mr. Ngefa’s organization is exploring how to link traditional war crimes and crimes against humanity with the nascent concept of economic war crimes.

Professor Martin next asked a question eliciting the advocates’ opinions regarding the international community’s efforts to address human rights issues. Harry Wu expressed his concern that the Western world, and in particular the United States, seems willing to dismiss human rights violations in China as cultural traditions. He noted the mutability of traditions, describing how France, a country once best known for the invention of the guillotine, now bans the death penalty. Mr. Wu expressed his hope that in the future, Western policy makers will not use the concept of tradition as an excuse to refrain from holding China accountable for its human rights violations. Digna Ochoa focused on the positive impact of international solidarity, explaining that it helps protect human rights defenders from governmental retribution for their work. Moreover, she noted that publicizing Mexican human rights violations abroad discourages the government from committing such abuses because of its fears of losing international economic investment as a result.

In closing, Ariel Dorfman, Walter Hines Page Research Professor of Literature and Latin American Studies at Duke University, playwright, and author of a theatrical presentation based on the defenders’ lives, reiterated how the defenders use the power of truth to challenge the status quo. Unwilling to turn away from the ugly and the horrific, these activists threaten not only state perpetrators of human rights violations, but also the complacency shared by many of the privileged around the world. As Ms. Kennedy-Cuomo states in the introduction to her book, “[t]heir determination, valor, and commitment in the face of overwhelming danger challenge each of us to take up the torch for a more decent society. Today we are blessed by the presence of these people. They are teachers, who show us not how to be saints, but how to be fully human.”

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Crimes of War provides an informative overview of war crimes and the laws designed to limit them. Consistent with the book’s educational mission, the reader obtains a useful foundation for evaluating current and future events. Although the book’s alphabetical organization, numerous contributors, and wide range of subject matter make for a somewhat uneven read, on the whole, it is an invaluable reference.

In addition to Professor Anderson’s contribution as legal editor, WCL Professor Diane Orentlicher provided the essay, “Genocide,” and WCL Professor Robert Goldman, assisted by

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defining the Rules and the Elements of the Crimes (Elements) on or before June 30, 2000. Although the United States is not a signatory to the Rome Statute, it has nonetheless taken an active role in drafting both the Rules and the Elements to be used by the Court once it officially comes into existence. In addition, the PrepCom agreed in June 2000 to extend considerations to exempt U.S. citizens from the jurisdiction of the Court until the PrepCom’s next meeting in November and December of this year. Because the Rome Statute is open for signature at the United Nations Headquarters in New York until December 31, 2000, the United States still has the opportunity to adopt the Rome Statute (Article 125). Therefore, should the United States choose to endorse the creation of the ICC, it will have a chance to review the final texts of the Rules prior to signing the treaty.

Conclusion

Although prior to the Rome Conference the Clinton administration advocated a world criminal court, the efforts of the U.S. delegation team at the Rome Conference do not reflect such a desire. Rather, their efforts reveal an American attempt to shape a court that would not pose a threat to U.S. citizens. Even before the U.S. delegation team headed to Rome during the summer of 1998, the U.S. State Department issued a statement signaling an impending U.S. opposition to the ICC: “The American armed forces have a unique peacekeeping role, posted to hot spots around the world. Representing the world’s sole remaining superpower, American soldiers on such missions stand to be uniquely subject to frivolous, nuisance accusations by parties of all sorts. And [the United States] simply cannot be expected to expose [its] people to those sorts of risks.” Accordingly, some might argue the United States sought the creation of a global court only insofar as the term “global” would exclude the United States.

Aside from U.S. opposition to the Rome Statute, the accomplishments of the Rome Conference mark an historic and important step toward ending the traditional impunity of those who commit the most offensive crimes. Perhaps the most remarkable aspect of the Rome Conference is the overwhelming international support for the creation of a permanent world criminal court. The consensus achieved in the ICC’s creation is testament to the international community’s unified position of intolerance toward crimes against humanity and other egregious crimes.

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then-WCL L.L.M. candidate Ewen Allison, provided seven entries, including “Belligerent Status,” “Civil Patrols,” and “Illegal or Prohibited Acts.” Royalties from the book support the Crimes of War Project, a non-profit organization based at American University that seeks to raise awareness about international humanitarian law.

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