



Human Rights

Notes & References:

Book: Roberts, Robertson (QC); *Crimes Against Humanity: The Struggle for Global Justice*, 3rd Ed., Penguin 2006. ISBN-13: 978-0-141-02463-9.

The movement for *global justice has been a struggle against sovereignty* – the doctrine of non-intervention in the internal affairs of nation states asserted by all governments which have refused to subject the treatment they mete out to their citizens to any independent external scrutiny.¹ P.xxx.

Reason for the UN not being an enforcer of human rights-

The UN system is not structurally or psychologically geared to deliver on human rights promises – other than by setting up institutions independent of its internal politics, which might make adjudicative decisions which require the enforcement powers of the Security Council to be deployed against states which do not accept adjudication. Any such system would challenge both the shibboleth of the sovereignty of nation states, and the obsessive neutrality ingrained in UN personnel and procedures. Obeisance to member-state sovereignty is the UN's systemic defect, and it accounts for the pathetic performance of the Human Rights Commission and that toothless tribunal, the Human Rights Committee. If the promises of the Universal Declaration are to be realized, we must look to bodies independent of the UN, to regional treaty systems and their courts, to forge an international human rights law sufficiently understood and respected to be enforced in municipal courts throughout the world. P.xxxi.²

Justice, the dominant motive in world affairs-

beginning of the 21st century, justice became of great importance in world affairs, evening replacing regional security as the trigger for international action. xxxiii.³

War Law-

Persistent throughout the 20th century was the diplomatic exercise to search for a law to preserve the peace of the world. International law has sought in two ways to regulate war:

¹Roberts, Robertson (QC); *Crimes Against Humanity: The Struggle for Global Justice*, 3rd Ed., Penguin 2006. ISBN-13: 978-0-141-02463-9. P.xxx.

² *ibid*, P.xxxi.

³ *ibid*, P.xxxiii.

(1) by restricting the justification for waging them; (2) and when that failed, by prescribing rules for conducting them humanely. In the latter, the Geneva Conventions has had some positive effect on treatment of prisoners-of-war. P.197.⁴

The rules of war are not now directly enforceable, but they do function to help viewers know and understand when a war crime is taking place. The generated collective anger plays an important part in effecting pressure and change on recalcitrants. P.198.⁵

As advances in military technology sheds light on the conducting of war and the facilitation of surgical strikes, the law of war may come to include features of law of tort, with combatants liable to be sued if deliberately or through gross negligence they missed their approved military target and kill or maim civilians. [In the United States this has taken effect on a few occasions when military personal being so charged].

The other fundamental flaw in customary law is that it accepts war as a legitimate and inevitable instrument of national policy, which can be made more bearable for both soldiers and non-combatants if armies follow rules. The task of law for the future is to change that assumption: war is unnecessary and starting war without Security Council approval or international law justification may in future count as the crime of aggression, so that those who foment war, as well as those who conduct war with exceptional viciousness, will be punished. P.199.⁶

There has to be a defined point, a trigger test, for the international community to intervene forcibly to restore the peace and round up those who can be held criminally responsible for its breach. Planning or waging a war of aggression is a crime against humanity, which the statute of the International Criminal Court recognizes in its terms but declines to punish because governments cannot yet agree on the definition of 'aggression'. There have been some modest advances since WWII. P.199.⁷

4 *ibid*, P.197.

5 *ibid*, P.198.

6 *ibid*, P.199.

7 *ibid*, P.199.