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## **Jus Post Bellum: Justice After the War**

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## Foreword

### *Jus Post Bellum: Justice After the War*

**Robert A. Stein\***

The Editors of the *Minnesota Journal of International Law* have wisely chosen a critically important subject for their 2017 Symposium Issue—how to rebuild the rule of law in post-conflict societies.

The 1948 Genocide Convention<sup>1</sup> was approved soon after the horrors of the Holocaust with the hope and expectation that “never again” would the world have to experience such devastation. Unfortunately, the subsequent years have shown that, rather than “never again,” the world has had to “again and again” deal with such inhumanity on a massive scale. The list of such conflicts is long, including Cambodia, Bosnia, Kosovo, Sierra Leone, East Timor, Rwanda, Chad, and on and on. These conflicts show why the topic of this Symposium is so important.

I had an opportunity to observe firsthand the devastation caused by the ethnic conflict in Bosnia and Herzegovina when I travelled to Sarajevo in 1996 shortly after the Dayton Peace Accords,<sup>2</sup> to witness the first sitting of the newly established Constitutional Court with international judges. Although a shaky peace was beginning to take hold in that city that had been surrounded and under siege for two years, artillery shells from Serb forces occupying the mountains surrounding the city continued to rain down. I saw a traumatized population and massive destruction in that formerly beautiful city that had been the site of the 1984 Winter Olympics. When the new Constitutional Court met for the first time in one of the few government buildings that was not significantly damaged by the

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1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

2. The General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugoslavia, Dec. 14, 1995, 35 I.L.M. 75, 89 (1996).

bombardment and able to accommodate the Court, the people of that city who turned out to attend the Court session openly wept when they saw the Judges enter the room. The convening of the Court symbolized for them the first step in the return of the rule of law to the country.

In a 2004 Report delivered to the United Nations (U.N.) Security Council (Rule of Law Report), Secretary General Kofi Anan addressed the enormous challenge of re-establishing the rule of law in post-conflict societies “within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population.”<sup>3</sup> The Secretary General described the multitude of tasks that must be undertaken to re-establish the rule of law in devastated conflict and post-conflict countries.<sup>4</sup>

A necessary initial step is a thorough assessment of the country and its particularized needs following a conflict.<sup>5</sup> Such an assessment must account for the current conditions of the justice systems, traditions within the country, history of abuse and inequity, and the expertise of the residents of the country.<sup>6</sup> Each situation is different, and the international community must provide the assistance appropriate to the particular country.

Another immediate need identified in the Rule of Law Report is to fill the void in the legal and security institutions in the wake of the conflict.<sup>7</sup> Filling the vacuum could involve U.N. peace operations or the civilian police force. Having law enforcement officers on the streets “can substantially reduce looting, harassment, rape, robbery, and murder.”<sup>8</sup>

In addition to assessment and stabilization, it is important for post-conflict countries to hold criminal trials, conducted by the national courts, if possible. Criminal trials serve dual functions of accountability and justice. They can give victims a truthful account of the events that transpired and de-legitimize extremist elements in the country. Mary Robinson, former President of Ireland and former U.N. High Commissioner for

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3. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* ¶ 3, U.N. Doc. S/2004/616 (Aug. 23, 2004) [hereinafter Rule of Law Report].

4. *Id.*

5. *Id.* ¶¶ 14–16.

6. *Id.*

7. *Id.* ¶¶ 27–33.

8. *Id.*

Human Rights, has stressed the principle of individual accountability for crimes.<sup>9</sup> She has warned that “If serious human rights violations are not addressed and a climate of impunity is permitted to continue, then the effect will be to stoke the fires of long term social conflict.”<sup>10</sup>

Criminal trials cannot exist alone; the Rule of Law Report urges that they be accompanied by reparations programs.<sup>11</sup> Reparations complement the accountability and truth-seeking objectives of criminal trials by addressing the needs of the victims. They can include monetary or non-monetary remedies, but they must work to promote reconciliation and restore victims’ confidence in the state.

For these criminal trials and reparation programs to be functional, it is vital that domestic justice systems be restored. Attention must be given to both the legal system and the people who work within that system so that the laws, and how they are enforced, conform to international human rights and “respond to the country’s current needs and realities.”<sup>12</sup>

Additionally, the Rule of Law Report made clear that this process of rebuilding requires “careful sequencing.”<sup>13</sup> Short-term and long-term projects should exist simultaneously so that they can “promote and sustain one another.”<sup>14</sup> Such mutual support requires that short-term projects consider long-term goals, such as building rule of law and rebuilding institutions. It also necessitates that even in the immediate aftermath of a conflict, strategic plans account for long-term goals.

Throughout this entire process it is also critical to develop meaningful public participation. It should begin as soon as possible to support the efforts to restore justice and secure public support for the reforms. “Civil society organizations, national legal associations, human rights groups, and advocates of victims and the vulnerable must all be given a voice in these processes.”<sup>15</sup>

In light of the enormity of the tasks required to rebuild a country, its community, and its rule of law following conflict, the

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9. Mary Robinson, *Genocide, War Crimes, Crimes Against Humanity*, 23 *FORDHAM INT’L L.J.* 275 (1999).

10. *Id.* at 277.

11. *Id.* ¶¶ 54–55.

12. *Id.*

13. *Id.* ¶ 21.

14. *Id.*

15. Rule of Law Report, *supra* note 3, ¶ 17.

four articles addressing this important topic in this Symposium issue of the *Minnesota Journal of International Law* provide important insights into the issues facing countries in conflict and post-conflict situations.

Dana Wolf, in her paper entitled *Transitional Post-occupation Obligations Under the Law of Belligerent Occupation*, addresses the legal obligations of the occupier during a belligerent occupation following a conflict. Specifically, she proposes a framework to address the power vacuum created when the occupier withdraws and there is no sovereign party that can fill a traditional governance role. Wolf argues that there should be some legal obligations for the withdrawing occupier in a limited set of circumstances

During a conflict, Jens Iverson argues in *War Aims Matter: Keeping Jus Contra Bellum Restrictive While Requiring the Articulation of the Goals of the Use of Force* that a more frank discussion of war aims is vital to jus post bellum and the process of transitioning to sustainable peace.

Fionnuala Ní Aoláin addresses the particular issues facing women during occupations, in her piece entitled *Gendering the Law of Occupation: The Case of Cyprus*. She argues that the law of occupation needs to consider gender because the current system often excludes women from peace negotiations and fails to consider history of violence against women.

In their paper entitled *The Right to a Genuine Electoral Democracy*, Amnon Rubinstein and Yaniv Roznai explore the state of democracy worldwide. They argue that democracy, and its public participation component, are vital to reducing instances of civil war and domestic bloodshed that traumatize a country and a people. The international community needs to do more to ensure or require that countries have periodic elections in a multiparty system.

The thoughtful essays in this Symposium Issue constitute significant contributions to informing the international community about the challenging tasks of rebuilding the rule of law during and after the devastation of conflict.