

December 2003

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CAN ORDINARY PEOPLE REGAIN THEIR POWER OF DECISION?

International law: justice as a commodity

International law now has some jurisdiction over dictators and war criminals, but not yet over economic crime: it reflects the balance of world power and is just as cowardly as the states that make it.

by **NURI ALBALA**

INTERNATIONAL law has made remarkable progress in a fairly short space of time. States have adopted instruments and founded international bodies to punish perpetrators of war crimes and human rights violations. They have introduced rules and established international courts to protect free trade. But what action have they taken to prosecute economic crimes? None.

There are courts to settle disputes between states, such as the International Court of Justice (ICJ) at The Hague, and courts in which citizens can call states to account for human rights violations, such as the Inter-American Court of Human Rights and the European Court of Human Rights. Fifty years after the Nuremberg Tribunal, we at last have international criminal tribunals for Rwanda and the former Yugoslavia and, as of March this year, an International Criminal Court (ICC) (1). Many countries have agreed to accede to international conventions on genocide, crimes against humanity and the imprescriptibility of such crimes, and some, like Argentina, have gone so far as to repeal existing amnesty laws. Some lawyers even consider that crimes against humanity ought to be open to prosecution anywhere, because of the peculiar nature of such crimes (2). This is bad news for dictators, who are beginning to realise that they will not always be immune from prosecution, even in their own countries.

But these advances do not alter the fact that dictators depend for their survival on support from national and international economic groups. These groups are the real beneficiaries; the despots merely do their dirty work. Most of the assassins in Chile, Nigeria and Burma are faithful servants, and their kind masters, who welcome advances in international law, find it quite natural, perhaps inevitable, to let them be. But the crimes that cause the greatest suffering are economic crimes.

International law and institutions are not uninterested in the activities of economic operators, but their interest shows a certain bias. Almost 10 years ago, in 1994, an international court, the Dispute Settlement Body (DSB), was quietly established within the World Trade Organisation (WTO) to decide cases brought against states for breach of the sacrosanct principle of free trade and competition (3). But most crimes committed by transnational corporations go unpunished. For example, the actions for forced labour brought by Burmese workers against TotalFinaElf in Belgium are a dead letter.

Companies are more or less immune because there is no international legal definition

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of economic crimes. Besides, international law is rarely concerned with corporate bodies, which are expressly excluded from the jurisdiction of the ICC. So the only remedy for crime is action against the state - either the state that gave the order or the state in whose territory the crime was committed. The problem is that the host state often feels under no obligation to comply with international conventions. Burma, for example, has not ratified any of the conventions in question. And ostensibly law-abiding democratic states where offending firms have their registered offices are afraid the firms will relocate if they adopt regulations that entail too much trouble or expense (4).



There is a simple reason for this imbalance in international law. People in many countries are making it known that they want perpetrators of crimes against humanity to be punished. And, whether they like it or not, governments are having to respond to popular demand and establish appropriate judicial institutions. But the big national and transnational corporations insist that trade must be liberalised and states must be subject to the rules on liberalisation. And states, which normally attach so much importance to sovereignty and freedom of action, and refuse to be judged on their human rights record, are meekly agreeing to be brought to book for breach of the rules on free trade.

Meanwhile the forces that call for crimes committed by transnational corporations to be defined and prosecuted are not, or not yet, strong enough for our rulers to feel justified in taking any steps in that direction.

Much is written about the rule of law and even about establishing the rule of international law, but the concept of law itself is rarely questioned. The law is not a fixed quantity: laws depend on the circumstances in which they arise, and they may change as those who promulgate them and those who interpret, apply and use them change. Karl Marx considered that the law reflects the balance of power in society at a given time. Human institutions (courts, tribunals) are required to give effect to something that is itself a product of human institutions - a truism that has not been given enough thought. During a visit to Africa in October, President Jacques Chirac said that legal immigration should be encouraged (5). That means that the French government will define what is legal, as it wishes and in its own way, and then pride itself on complying with the legal requirements.

So the law is not sacred, although the obligation to obey has been a mark of progress in human society since the age of enlightenment. There are hierarchies within the law, and the whole elaborate edifice of international commercial law constructed over the past 10 years means that trade and trade regulations are now the general rule and social or environmental protection the exception (6). In law an instrument often has to be interpreted before it can be applied, and exceptions (in this case, social protection, respect for the environment, cultural diversity) are interpreted extremely strictly so as to have the least possible impact on the general rule - free trade and industry.

International law is mostly made by governments, which pay scant respect to the separation of legislative, executive and judicial powers. Treaties are negotiated exclusively by the executive. The citizens' representatives in parliament intervene after the event to ratify or refuse to ratify the convention, but they cannot change its terms (7). So rules that are to be internationally applicable in law are dictated by the strongest states and the power of the transnationals. And if the WTO and the DSB exercise so much power while refusing to comply with provisions protecting the rights of the people, it must be because states are resolved that they should and because our rulers are more willing to submit to the laws imposed by transnational trade than the law governing international relations.

Can people change the course of international law and regain their power of decision? Perhaps. They must first recover the law-making tradition that has been an essential part of the democratic heritage since 1789. Fundamental rights are a powerful weapon capable, if properly understood, of arresting the development of a system of law based entirely on the primacy of trade and profit. It is a civic duty to assert these rights, to rebel against resignation, the erosion of democracy and the idea that might (or wealth) is right. Tenants' associations are well aware of the support they derive from the declaration, in the 1966 UN Covenant on economic, social and cultural

rights, that everyone has a right to housing.

Citizens can also make their presence felt by moving into many areas from which they cannot be excluded, by speaking up at the major G8 or WTO summits or counter-summits (8) and in bodies that have some power and independence. The UN Human Rights Subcommittee composed of independent experts, with assistance from NGOs, has produced a number of international conventions subsequently adopted by states, and drew up and submitted in August draft norms on the responsibilities of transnational corporations (9).

The United Nations is still a place where progress can be made in the interests of the people. We look forward to the day when it is more democratic and can make an even greater contribution.

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(1) See Anne-Cécile Robert, "[Court in session](#)", *Le Monde diplomatique*, English language edition, July 2003.

(2) This is accepted in some countries, though no longer in Belgium, which was forced under strong US pressure, to abandon its 1993 law on 5 August 2003. See Tzvetan Todorov, "Les illusions d'une justice universelle," *Le Monde des débats*, n° 25 May 2001.

(3) In France, the first law on freedom of trade and industry was the Loi Le Chapelier of 17 June 1791 and one of its main objects, even then, was to ban workers' coalitions - that is, trade unions.

(4) See FIDH, "[80 ans de lutte contre l'impunité](#)".

(5) Reported in *Le Monde*, 25 October 2003.

(6) See Mireille Delmas-Marty, "[Justice for sale](#)", *Le Monde diplomatique*, English language edition, August 2003.

(7) Hence certain original features of the international courts such as the remarkable Article 16 of the ICC Statute under which the Security Council may request the ICC not to commence or proceed with an investigation or prosecution, and the request may be renewed indefinitely.

(8) The active role of the NGOs was seen again at the recent WTO summit in Cancun. See Laurence Caramel, "L'influence grandissante des grandes ONG anti-OMC", *Le Monde*, 16 September 2003.

(9) UN document E/CN.4/Sub.2/2003/12.

Translated by Barbara Wilson