

Editors' Foreword

*For Justice is one; it binds all human society and is based on one Law, which is right reason applied to command and prohibition. Whoever knows not this Law, whether it has been recorded in writing anywhere or not, is without Justice.*¹

Justice is a word fraught with tension and conflict. From its theoretical foundations to its practical implications, it is a concept with which societies have struggled for centuries. The 1948 signing of the Universal Declaration of Human Rights represented a nascent attempt by the international community to address this struggle by creating a system dedicated to working toward justice for all. The recent commemoration of the 50th anniversary of the declaration has served as an opportunity to reassess the world's commitment to its principles. Today, with the international community still searching for an effective global legal framework, numerous cases continue to emerge to challenge the pledge of the 1948 declaration. Does the sluggish response to the atrocities in Rwanda and Bosnia serve as a testimony to a universal indifference, or should we be encouraged by attempts to institutionalize the pursuit of justice as seen in the 1998 Rome conference to establish the International Criminal Court?

When the *Journal of International Affairs* published "The Politics of International Law," in the winter of 1984, the Cold War was in its waning years. Though less than two decades ago, the practice of international law at the time was, in many ways, still in its infancy. Our authors addressed dilemmas of arms control and humanitarian intervention and questioned the relevancy of pursuing international solutions to global injustice. Writing an article on the International Court of Justice in that issue, Richard Falk acknowledged its apparent failure, lamenting:

...even jurists seem disenchanted with international legal institutions. Many now suggest that the true

¹ Cicero, *De Legibus*, I. xv. 42, in *Cicero: The Loeb Classical Library Vol. XVI*, ed. G. P. Goold, trans. Clinton Walker Keyes (Cambridge, MA: Harvard University Press, 1977) p. 345.

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function of the Court should be assessed less in terms of its effectiveness in settling international disputes than in terms of its contribution to the development of international law. A prudent evaluation of the future of the Court seems to suggest a 'wait-and-see' attitude, dedicated to preserving this institution in the hope that sometime in the future, its existence will facilitate the effective application of international law.²

There are those who think that Dr. Falk's "sometime" might be now. In light of that, we must evaluate whether we have truly remained committed to efforts of seeking justice and defending peace. Truth and reconciliation commissions and ad hoc tribunals seem to represent a renewed faith in institutions and progress toward a place where normative international law must depend on more than the moral suasion of a select few. Even those skeptical of the inclusive concept of world governance must recognize the increased cooperation between states and among peoples brought about by formal and informal institutions. The increased influence of nonstate actors such as corporations and nongovernmental organizations requires a consideration of their role in the process of building such institutions. What remains to be seen is whether the creation of these new institutions works to unite the world or further divide it along political lines.

The Spring 1999 issue of the *Journal of International Affairs*, "Seeking International Justice: The Role of Institutions," explores justice in the context of some of today's current struggles, some of which have roots reaching back centuries. There are two threads that link the articles of this issue: justice in its varying forms and the institutions that have been created to address this complex concept.

Richard Falk is a *Journal* contributor again, writing the introductory essay that looks at the origins of the normative, moral, historical and legal sources of international justice. He identifies the pervasive dilemmas that are currently impeding the pursuit of justice on a global scale and provides a vision of a transformed world order in which the realization of justice is more tenable. An interview with **Jimmy Carter** illuminates some of the most significant and relevant events of his tenure as president of the United States as well as his work at the Carter Center.

² Richard Falk, "The Role of the International Court of Justice," *Journal of International Affairs*, 37, no. 2 (Winter 1984) p. 253.

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President Carter provides the reader the opportunity to examine the pursuit of international justice through both individual and institutional mechanisms, and he encourages the increased activity of nongovernmental organizations (NGOs) in that pursuit. **Benjamin Ferencz** gives a personal account of his lifelong struggle for justice. Beginning with his work as a prosecutor for the Nuremberg Trials in 1945 and continuing with his involvement in the efforts to create the International Criminal Court (ICC) in the summer of 1998, Mr. Ferencz argues that we must develop new ways of thinking and new institutions to create an international society that is more lawful and humane for all people.

The "Establishing a Framework" section of this issue is intended to provide an analysis of some of the broad concepts that are critical to understanding international norms of justice. **Naomi Roht-Ariazza** begins this section by providing some of the key concepts of justice in the context of genocide, war crimes and crimes against humanity. She traces the difficulty of establishing definitions and jurisdictions for these crimes and examines the potential of the ICC to grapple successfully with such criminal acts. She concludes, among other things, that the creation of global institutions of justice will likely improve national justice systems around the world.

Peter van Tuijl describes the role that NGOs have assumed in advocating human rights and justice on an international scale. If NGOs learn to improve their networks and collaborate in more systematic ways, he argues, they will continue to be an important element of civil society and a source of democracy. **Marsha A. Freeman** analyzes the concept of gender justice and the institutions that have been created to enforce it. She argues that institutions, regardless of their mission, should incorporate a gender perspective in all their work rather than consider the issue separately.

Shifting to an economic perspective, **Ethan B. Kapstein** explores the international trade regime and the extent to which it provides—or fails to provide—a just arena for its participants, whether they be developing countries or workers in industrial countries displaced by liberalization. He argues that compensation mechanisms both between and among nations are necessary if international trade is to adequately serve the interests of justice. **Debora Spar** and **David Yoffie** examine the growing influence multinational corporations and the concept of "racing to the bottom." Though it might be unrealistic to expect corporations to lead the struggle for international justice, they contend, there are ways to encourage them to strive for higher standards and be

concerned about social issues. In the section's last essay, **Yozo Yokota** examines attempts to seek justice in the context of international environmental concerns. He argues that traditional international law is incapable of addressing emerging global environmental threats, asserting that a fundamental change is necessary from laws among sovereign states to those encompassing the entire global community.

The "Justice in Practice" section looks at recent efforts toward justice in several regions of the world. **Ed Vulliamy** begins the section by recounting his experiences as a reporter covering the war in the former Yugoslavia and his decision to testify for the prosecution at the International Criminal Tribunal for the Former Yugoslavia in The Hague. Considering neutrality complicity, he looks closely at the atrocities of ethnic cleansing and challenges the reluctance of the international community to provide an adequate response. **Michael P. Scharf** examines the options available to the international community in responding to mass violations of international humanitarian law and evaluates the work of the International Criminal Tribunal for Rwanda (ICTR) in holding accountable the perpetrators of injustice during the Rwandan genocide. **Brenda Sue Thornton**, a legal adviser for the ICTR in Arusha, Tanzania, offers a report from the field reviewing the first five cases heard by the tribunal.

Paul van Zyl examines the establishment of South Africa's Truth and Reconciliation Commission as the mechanism chosen to come to terms with the legacy of apartheid and prepare for his country's tenuous future. When injustice is the rule in society instead of the exception, he argues, transition governments must find a creative approach to deal with such atrocities. In considering Argentina's legacy of disappearances and tortures, **Louis Moreno Ocampo** contemplates the search for justice in the wake of prosecutions undermined by amnesties, determining that only truth telling, disclosure of information and an active civil society will provide a modicum of societal closure. **Stephen P. Marks** discusses the lasting impact of the Khmer Rouge regime on Cambodian society, describing how political turmoil and lack of political will, both domestically and internationally, have delayed justice for the victims of two decades of atrocities.

Turning to Northern Ireland, **Seamus Dunn** analyzes the origins of the peace process leading up to the Good Friday Agreement. His essay discusses the need for justice for all those involved in the negotiations, as well as the dilemmas posed by decommissioning arms and the symbolism of street parades. **David Cortright** and **George A. Lopez** examine the role of sanctions

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as a policy weapon, specifically the imposition of sanctions on Iraq. They argue that such actions serve the interests of the mighty and represent an injustice for the members of Iraqi society. The Andrew Wellington Cordier Essay concludes this section, with **Michelle Sieff** and **Leslie Vinjamuri Wright** considering the different institutions chosen to seek justice in Argentina, South Africa, Rwanda and the former Yugoslavia. The authors argue that the ways countries deal with transitional justice depends on the balance of power, the role of transnational advocacy networks and the goals of political leaders.

This edition of the *Journal* concludes with a section debating the viability of the newly-created International Criminal Court. **Alfred P. Rubin** argues that the danger of the court's surrendering to political pressures would be too great to overcome, and that the technical flaws of the ICC make it impractical and impossible to implement. **Cherif M. Bassiouni**, on the other hand, supports the decision to establish the ICC, claiming that only through such a body will the international community be able to address the crimes and atrocities of today's world in a manner considered fair and just.

Collectively, the essays of this issue provide an in-depth examination of the existing and evolving international legal system and illuminate, in their foresight and analysis, the challenges inherent in the pursuit of justice. These challenges should not be seen as insurmountable, but should serve as a reminder of the importance of being ardent in that pursuit. In the end we find that justice is not only a concept that embodies tension and conflict, but one that is emblematic of the ideals for which we strive. ♣