

# Chicago-Kent Journal of International and Comparative Law

---

Volume 1 | Issue 1

Article 1

---

5-1-2001

## Imperative to Conscience: The Impact of Communications Media on the Practice of Genocide and Other War Crimes

Paul J. Dombeck

Follow this and additional works at: <http://scholarship.kentlaw.iit.edu/ckjicl>

 Part of the [Law Commons](#)

---

### Recommended Citation

Paul J. Dombeck, *Imperative to Conscience: The Impact of Communications Media on the Practice of Genocide and Other War Crimes*, 1 Chi.-Kent J. Int'l & Comp. Law 1 (2001).

Available at: <http://scholarship.kentlaw.iit.edu/ckjicl/vol1/iss1/1>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Journal of International and Comparative Law by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dginsberg@kentlaw.iit.edu](mailto:dginsberg@kentlaw.iit.edu).

**IMPERATIVE TO CONSCIENCE:**  
**THE IMPACT OF COMMUNICATIONS MEDIA ON THE PRACTICE OF**  
**GENOCIDE AND OTHER WAR CRIMES**

**Author: Paul J. Dombeck, BA.**

<b>PART I: THE NEW WORLD ORDER, SETTING THE STAGE</b> .....	<b>4</b>
A. THE RIGHT TO FREE SPEECH.....	4
B. THE EXPLOSION OF INFORMATION TECHNOLOGY .....	7
C. FREE SPEECH V. PROTECTIONISM.....	9
D. GLOBALIZATION AND TRANSNATIONAL CIVIL SOCIETY .....	12
<b>PART II: THE CURRENT IMPACT OF INFORMATION TECHNOLOGY ON WAR</b> <b>CRIMES</b> .....	<b>19</b>
E. PREVENTING WAR CRIMES BEFORE THE FACT .....	20
F. INCITING WAR CRIMES.....	23
G. STOPPING WAR CRIMES IN PROGRESS.....	28
H. EXPOSING WAR CRIMES AFTER THE FACT .....	31
I. INFLUENCING THE PUNISHMENT OF WAR CRIMES.....	36
<b>PART III: THE FUTURE IMPACT OF INFORMATION TECHNOLOGY UPON WAR</b> <b>CRIMES</b> .....	<b>40</b>
J. INTERNATIONAL PROTECTION OF THE RIGHT TO USE INFORMATION TECHNOLOGY .....	40
K. THE FUTURE .....	46
<b>CONCLUSION</b> .....	<b>50</b>

## INTRODUCTION

Why does genocide exist?<sup>1</sup> Why does one group decide another must be blotted from the face of the earth; wiped out? Whether nationalism, religious belief, xenophobia, competition for resources and living space, ignorance, self-preservation, fear, or an actual, tangible evil, man has, through recorded history, engaged in the practice of genocide.<sup>2</sup> Whatever the case, a clue to the nature of the problem as well as a solution may be emerging in the contemporary technological and communications-media revolution. In an unprecedented way, the practice and pattern of genocide appears to have been altered by a new and powerful international “attention.” Again and again, such terms as “International attention” and “world attention” are cited as the reason why war crimes, particularly genocidal practices, have been altered. This “attention” has exposed the fact of mass killings that otherwise would have remained unknown. It has led to the secession of genocidal crimes in progress, has demanded legal procedure and punishment for alleged perpetrators, and in some cases actually prevented atrocity and repression that might otherwise have occurred.

---

<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Jan. 12, 1951, Article Two, 78 U.N.T.S. 277, 277. “[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

<sup>2</sup> FREDERIC WERTHAM, *A SIGN FOR CAIN* 140-41 (New York: MacMillan, 1966). “Many extensive massacres and exterminations have occurred in the past: The crusades (a million victims); the Inquisition (a quarter of a million); the burning of witches (at least 20,000); the subjection of colonies in South America (more than 15,000,000); the island of Haiti (24,000 survivors out of 1,000,000 inhabitants after thirty-five years of colonization); the extermination of the Indians in Argentina and Uruguay, the island of Mauritino (the work slaves died so fast that 1,000 had to be imported annually); Java (the Dutch East India Company extorted in twelve years \$830,000,000 from the slave labor of 5,000,000 natives, untold numbers of whom perished); the Congo (of 30,000,000 inhabitants at the time of its colonial takeover, 8,600 were still alive in 1911); . . . Nanking (the massacre by the Japanese); the Hereros in Southwest Africa (40,000 men, women and children were surrounded, driven into the desert, and left to die of hunger and thirst . . . Armenians (1,500,000 were driven from the place they had cultivated for more than 2000 years; many men, women, and children were massacred or left to perish in the desert); and so on and on.”

In short, the premise of this article is that technological advances which have led to advances in communication media, which in turn have led to phenomena such as “Globalization” and “Transnational Civil Society,” which in their turn have led to increased awareness of and action against genocide and related war crimes, have created an evolution in human consciousness; a tangible phenomenon in its own right, so encompassing and dynamic as to contain within itself such concepts as globalization and transnational civil society, as symptoms or elements, as it were, of a heightened human condition. This is precisely because it is communication that has increased the knowledge and awareness of mankind. What is knowledge and awareness but an increase in consciousness? How else does an increase in consciousness occur but through knowledge and awareness? The significance of this causal dynamic lies in the potential end result: a permanent change in the ages-old human practice of genocide and brutality. If the only dynamic at work, on the other hand, were some new “globalized” economic or technocratic world order, there would be little, if any, impetus, beyond mere convenience, to the eradication of genocide. Were there no actual evolution in the conscious of mankind, no such *irresistible force*, it is unlikely any permanent change could be made to what, based on its pervasive presence throughout recorded history, has unfortunately proven an *immovable object*: the practice of genocide and brutality.

In Part I, I will set the stage, with an analysis of speech, media, and genocide in light of changes and developments in the world order. In Part II, I will outline the effects and consequences of the profound and wondrous changes wrought by the evolution of consciousness, and the effects and consequences thereof in the arena of human rights. In Part III, finally, I will attempt to outline the basis, direction and potential for significant change in the profoundly tragic practice of genocide and other war crimes.

---

## PART I: THE NEW WORLD ORDER, SETTING THE STAGE

### A. THE RIGHT TO FREE SPEECH

Freedom of speech is fundamental to the right and ability of the media to impart meaningful and truthful information. As such, the media must be free to operate without prohibitive restraint. In discussing censorship of the media, specifically, abuse of regulatory power by governments, Paul Barent, in *The Freedom of Speech*,<sup>3</sup> contends that within limits, there should be a right for people to communicate to a mass audience, especially where those people would be “systematically excluded or repressed by public authorities”<sup>4</sup>

Repression of this sort was evident in the practice of governments against various minority ethnic groups in the former Yugoslavia.<sup>5</sup> Barent explains (also discussed, *infra*, Part III, Sec. J) that the European Convention on Human Rights provides an international legal basis for the right to receive information, and that both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide the right to seek information, and finally that the European Court has held the right to free speech implicit in Article 10 of the European Convention.<sup>6</sup> Barent points out, however, that both the courts and institutions applying the European Convention, and also the courts of the United States and Germany, have sought balance between relevant government interests underlying a challenged law, and the speech that

---

<sup>3</sup> PAUL BARENT, *FREEDOM OF SPEECH* (Clarendon Press Oxford 1985).

<sup>4</sup> *Id.* at 85-86.

<sup>5</sup> See *infra* note 33.

<sup>6</sup> BARENT, at 112 (See the Report of the Council of Europe on Activities in the Mass Media Field, DH/MM(83) .“Article 19 of the Universal Declaration of Human Rights provides that everyone has the right to “receive and impart information and ideas through any media and regardless of frontiers.”) Universal Decl. H.R, See also *infra* Part III, Section J, and footnotes 126-128.

the government seeks to restrict or punish.<sup>7</sup>

Others have argued that the right to free speech is fundamental and as such is a natural law. Specifically, speech free of interference from the state is an example of such a natural law.<sup>8</sup> The significance of free speech in the last few years has increased on account of the availability of technological leaps in communication. The potential to reach and interact very quickly with large and diverse groups of people by phone, the computer, or by media exposure has made free speech even more valuable, particularly for oppressed or repressed individuals or groups. The extent to which this right has been defended is apparent: “[W]hy of all the human rights issues there are should it be the issue of free speech which is constantly at the head of the queue for rights adjudication? The answer is very clear: it is because for the mass media free speech is a valuable commodity and litigation a worthwhile investment in it.”<sup>9</sup>

While the right to free speech is fundamental, it is not boundless. While it is essential that media exist on a private basis, free of state control, there is a danger that monopolies created by private media, to the extent that they detract from the ability of individuals to advance human rights, could have the same detrimental effect as state control.<sup>10</sup>

In *Markt Intern and Beerman v. Germany*,<sup>11</sup> a leading case on commercial expression

---

<sup>7</sup> *Id.* at 148.

<sup>8</sup> Edward M. Andries, *On the German Constitution's Fiftieth Anniversary: Jacques Maritain and the 1949 Basic Law. (Grundgesetz)*, 13 EMORY INT'L L. REV. 1, 70 (1999). (citing Jacques Maritain, *On the Philosophy of Human Rights*, in *Human Rights: Comments and Interpretations*, 74-75 (UNESCO ed., 1949)).

<sup>9</sup> Sionaidh Douglas-Scott, *The Hatefulness of Protected Speech: A Comparison of the American and European Approaches*, 7 WM. & MARY BILL RTS. J. 305, (1999). (citing, Sir Stephen Sedley, *Human Rights: a Twenty First Century Agenda*, Autumn, 1995 Pub.L. 386, 396).

<sup>10</sup> *Id.* at 342.

<sup>11</sup> *Markt Intern and Beermann v. Germany*, 11 EUR. HUM. RTS. REP. 212, at para. 72 (Eur. Comm'n H.R. 1987) (emphasis added). (Applicant, publishing company, complained of unfair suppression of their publication concerning the commercial behavior of a mail-order shop firm on the ground that that publishing company had interfered with the firm's competitiveness.)

under the European Convention, the European Commission of Human Rights (ECHR) upheld the German court's injunction of speech harmful to commercial competition which at the same time addressed matters of public concern.<sup>12</sup> The ECHR concluded that in commercial matters, it will defer to the national (German) court because of the complexity of questions of market competition, except in extreme cases where a nation has not sufficiently balanced the market competition interest with that nation's own interest in restricting free expression.<sup>13</sup>

In several other decisions, the ECHR held that public proceedings before judicial bodies is "one of the means whereby confidence in the courts, superior and inferior, can be maintained."<sup>14</sup> In *Axen v. Germany*, in particular, The European Commission on Human Rights clearly explained that open proceedings were necessary both for the public interest as well as the protection of the litigant.<sup>15</sup>

Other international human rights bodies have upheld these same principles. The comment, "publicity of hearings is an important safeguard in the interest of the individual and of

---

<sup>12</sup> *Id.* at 245-252.

<sup>13</sup> *Id.* at 253.

<sup>14</sup> See *Axen v. Germany*, 72 Eur. Ct. H.R. (ser. A) para. 25 (1983) (Appeal from ruling of the 6<sup>th</sup> Chamber of the German Federal Court of Justice decision denying without a hearing, an appeal of a lower German court auto accident damage award. The European Court Commission held there had been no violation of Article 6 of the European Convention which holds that "[E]veryone is entitled to a fair and public hearing . . . by (a) tribunal"); See also *Sutter v. Switzerland*, 74 Eur. Ct. H.R. (ser. A) at para. 26 (1984) (European Court of Human Rights denied appeal by applicant, a Swiss national of dismissal by the military Court of Cassation, of Divisional Court conviction for failure to observe military regulations, on ground that Court of Cassation had not conducted public proceedings nor public judgment, in violation of Article 6(1) of the European Convention, finding that failure to give judgment in public did not contravene nor violate Article 6); *Pretto v. Italy*, 71 Eur. Ct. H.R. (ser. A) at para. 21 (1983) (European Commission denies an appeal from adverse ruling by Court of Cassation, in local Italian case involving the sale of land, on the ground that the Court of Cassation had violated Article 6(1) by not rendering a public judgment).

<sup>15</sup> *Axen v. Germany*, App. No. 8273/78, 57 Eur. Ct. H.R. (ser. B) at para. 36, 60 (1983). "Only if the public is admitted to the hearing, could it be verified whether the judgment contained all essential facts and was given in accordance with the law . . . . [T]he publicity of the hearing has a function of control, information and protection. It is both an objective function and one for the protection of the individual litigant. Therefore the public shall be

society at large,”<sup>16</sup> by the United Nations Human Rights Committee, is notable in this regard.

The right to speech, free of state control, within limits, thus, is deemed a fundamental right under contemporary international human rights legislation and adjudication. While such fundamental principles have provided an indispensable starting point for today’s human rights movements, it is the recent communications technology revolution that has revolutionized the possibilities of the right to free speech.

## B. THE EXPLOSION OF INFORMATION TECHNOLOGY

In the 1990’s the availability and use of information technology has skyrocketed. It is estimated that as of September, 1999, there are, worldwide, 201 million people using the Internet (i.e., “on line”). Of this number, 112.4 million users alone are in the United States and Canada, 47.15 million in Europe, 33.61 million in Asia and the Pacific, 5.29 million in Latin America, 1.72 million in Africa, and, 880,000 in the Middle East.<sup>17</sup>

As of October, 1999, telephone surveys of 2000 consumers in 12 European countries revealed that one-fifth of Europeans use the Internet.<sup>18</sup> Research has indicated that at least one third of top websites in three major countries in Europe were global web brands.<sup>19</sup> Moreover, business to business Internet commerce will be worth \$251 billion in 2000, and \$1.4 trillion by

---

informed of the court's administration of justice. Such information serves to spread knowledge of the law and its application but also to get a -- possibly critical -- examination of the administration of justice by the public.”

<sup>16</sup> Faiza Patel King, *Public Disclosure In Rule 61 Proceedings Before the International Criminal Tribunal For The Former Yugoslavia*, 29 N.Y.U. J. INT’L L. & POL. 523, 544 (1997); (quoting UNITED NATIONS HUMAN RIGHTS COMMITTEE, Comment 13, supra note 49, para. 6).

<sup>17</sup> [http://www.nua.ie/surveys/how\\_many\\_online/index.html](http://www.nua.ie/surveys/how_many_online/index.html). (Source: *Nua Internet Surveys*).

<sup>18</sup> *Weekly Editorial Dotcom Mania*, <http://www.nua.ie/surveys/index.cgi>.

<sup>19</sup> *Id.* (Source: MMXI Europe, an online publication search service).



2003.<sup>20</sup> The market for personal assistant services and intelligent agents for mobile phones, is estimated, will total, by 2005, \$26 billion.<sup>21</sup>

In terms of its worldwide impact, it is worth noting that Television, perhaps the “precursor” of the current computer revolution, itself was responsible for some progress in the human rights arena. In the 1970s, skyrocketing television ownership and use<sup>22</sup> enabled theretofore unheard of enhancement of human awareness, if not participation, in events of historical human importance. For example, in the 1970s and 1980s, television was a significant factor in overthrowing repressive European governments.<sup>23</sup> Similarly, the people of Spain were able to learn about political opposition to Francisco Franco’s regime, and actually saw his overthrow from their homes on television. In 1990, Romanians were able to watch the ouster of Nicolie Ceaucescu’s on television, and in 1989, Europeans witnessed the destruction of the Berlin Wall in this manner.<sup>24</sup>

Though the effect of television upon human rights issues was clearly significant, its impact has not proven as sudden and dramatic as the current computer revolution. Television, for example, was in use in the 1950s, yet its dramatic proliferation, as it were, did not occur until much later; and while crude computers existed in the 1950s, mass use of computers is a phenomenon of the 1990s, contemporaneous with the rise of the Internet. It is the proliferation and mass-use of the Internet, moreover, (as will be explored *infra* Part I, Section D, and

---

<sup>20</sup> *Id.* (Source: Forrester Research).

<sup>21</sup> *Id.* (Source: Ovum Research).

<sup>22</sup> By the early 1970’s, television growth had greatly increased, and by 1978 to 1990, the number of television sets in the world had increased from 399,208,674 to 614,941,785. See Laurence G. C. Kaplan, *The European Community’s “Television Without Frontiers” Directive: Stimulating Europe to Regulate Culture*, 8 EMORY INT’L L. REV. 255, 267(1994) (citing Television Digest, Inc., 47 Television Factbook 1156-b (1978)).

<sup>23</sup> Kaplan, 8 EMORY INT’L L. REV. at 267 (citing Serge Regourd, *La Television Des Europeens* 106 (1992)).

throughout Parts II and III), that has had, and appears will continue to have, the most dramatic beneficial impact in the human rights arena.

For a greater understanding of today's international legal issues concerning the connection between human rights and communications technology, it is helpful, however, to examine first the international legal issues concerning nationalism and culture that resulted from radio and television broadcasting throughout much of the 20<sup>th</sup> Century.

### C. FREE SPEECH V. PROTECTIONISM

The rise of communication media, i.e., Radio, Television, the Press, the Internet, etc., has increased cultural exchange; a development that some nations have viewed with concern. With its numerous nations, cultures, and political systems, Europe provides the best examples. Since the 1930's, European governments have demonstrated concern about the effect of foreign broadcasts.<sup>25</sup> This concern was demonstrated by the League of Nation's drafting of the International Convention Concerning the Use of Broadcasting in the Cause of Peace, the purpose of which was the regulation of broadcasts from one country that had the potential to threaten the internal security of another country.<sup>26</sup>

Because television transmission waves cross all national boundaries some European nations have viewed that medium with concern, beginning in the 1970's, when satellite communication had become prevalent.<sup>27</sup> Concern that broadcasts from one state could "spill over" and cause damage to another nation's sovereignty led France to propose international

---

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 262.

<sup>26</sup> *Id.* (The League did not in the end implement this convention).

<sup>27</sup> *Id.* at 264, 271.

legislation which would serve as a shield deflecting the natural effects of the free market upon culture.<sup>28</sup> The concern behind this directive was that European nations would lose their cultural identity to a dominant American culture. The popularity of American television programs with citizens of European countries was viewed with particular concern.<sup>29</sup>

Lawrence Kaplan<sup>30</sup> proposes that Cultural identity is even more powerful than market forces because “audiovisual communication is in touch with a nation’s ‘essence.’”<sup>31</sup> Television viewers, as citizens, he argues, are seeking a point of reference in their cultural identity, which will serve as a link with the past and present, as well as enable a perception of the future.<sup>32</sup> Kaplan concludes that European arguments that the type of political and legal assertion evident in the “Television Without Frontiers” Directive; namely, protection of European cultural identity from the influence of American television, is necessary for European nations to preserve their separate cultural identity.<sup>33</sup>

Europe has a long-standing history of warfare and genocide.<sup>34</sup> Perhaps the “culture”

---

<sup>28</sup> Kaplan, *supra*, note 22, at 264-5. (quoting Proposed Principles to Govern Direct Broadcasts from Communication Satellites and the United Nations 241-44 (1978)). The legislation, a directive proposed in 1972, was called Television Without Frontiers. France was mainly concerned with transmissions from another state that might harm the sovereignty of a state receiving the information. The focus was on: 1) programs that specifically interfere with the internal affairs of another state; 2) material that could disturb international peace or the internal peace of another country; 3) attacks on human dignity and the rights of individuals; 4) morally, religiously, philosophically, or politically offense materials; 5) excessively violent material. *Id.*

<sup>29</sup> *Id.* at 328-30.

<sup>30</sup> *Supra*, note 22.

<sup>31</sup> *Id.* at 340.

<sup>32</sup> *Id.* at 339.

<sup>33</sup> *Id.* at 339-40.

<sup>34</sup> See MICHAEL P. SCHARF, BALKAN JUSTICE, THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG 21-23 (Carolina Academic Press 1997). (“Since recorded time [Yugoslavia] has been invaded, contested, and ruled successively or concurrently by the Macedonian, Roman, Byzantine, Slav, Bulgar, Venetian, Austro-Hungarian, Ottoman, and the Nazi-German Empires. In 1389, Ottoman Turks defeated Servain forces at the

emanating from the United States, to the extent it is absorbed by the European citizenry, may serve to chip away at established national and ethnic hatreds that have fueled war crimes, and atrocities. As flippant as it may sound, traditional ethnic, cultural or national enemies might both enjoy “Frasier” on television, and thereby have some “culture,” as it were, in common. Though it is not difficult to conclude such a link is shallow, it is a connection nonetheless: “Movies, sitcoms, and other kinds of fiction and entertainment...to a large extent, affect the way spectators perceive society and address issues. Television viewers subtly and subconsciously develop and change their way of thinking and acting based on what is seen on the screen.”<sup>35</sup>

In his essay, on the other hand, Michael Pendleton offers the suggestion that television content laws restricting programming to a national or local forum, may merely be a disguised tariff using protection of home industry and national culture as a justification for economic protectionism.<sup>36</sup> He concludes: “If a culture is so weak that it can apportion priority to raising cultural consciousness in order to differentiate itself from the all-pervasive American program, then perhaps it deserves to be subsumed.”<sup>37</sup> Perhaps America’s model as a melting pot, a fact

---

battle of Kosovo Polje (Field of the Blackbirds). During Ottoman rule many Balkan peoples were able to preserve their cultures only by accepting second-class status within the Ottoman Empire. Others converted to Islam to avoid persecution and the oppressive taxes required of non-Muslims. Current day Serbian hostility toward Bosnian Muslims stems in large part from what they believe was betrayal of the true faith by their ancestors over six hundred years ago. Two Balkan wars were fought in 1912 and 1913, which resulted in the liberation of the Balkan Peninsula from Ottoman control. During these conflicts, Serbian nationalists resorted to ethnic violence on a massive scale: “houses and whole villages were reduced to ashes, unarmed and innocent populations were massacred en masse, incredible acts of violence, pillage and brutality of every kind --such were the means employed by the Serbo-Montenegrin soldiery.”

During World War II, Croatia (consisting of today’s states of Croatia and Bosnia-Herzegovina) became a puppet Nazi State. The Croatian leader Ante Pavelic stated “the Slavoserbs are the rubbish of a nation, the type of people who will sell themselves to anyone and at any price, and to every buyer.” Another Croatian leader declared: “we shall slay one-third of the Serbian population, drive away another third, and the rest we shall convert to the Roman Catholic faith and thus assimilate into Croats. Thus we will destroy every trace of theirs and all that which will be left will be an evil memory of them.”

<sup>35</sup> Kaplan, *supra*, note 22, at 337.

<sup>36</sup> Michael D. Pendleton, *Essay Fordham International Law Journal*, 22 FORDHAM INT’L L.J. 2052, 2084 (1999).

<sup>37</sup> *Id.*

reflected in the American television sit-coms, many of which include underlying messages advancing racial and cultural diversity, may serve to change some traditional European rivalries. European fears of the loss of aspects of their cultural identity, and indeed, their “high culture,” are not unfounded. However, American television “culture”, perhaps one-dimensional and shallow, may nevertheless play some role in eroding traditional European hatreds.

Aside from concerns about television, other communication media such as the Internet have proven very useful to European nations.<sup>38</sup> Despite deep-seeded ethnic and national rivalries, European cultures are in fact closely related culturally, and increasingly interdependent upon each other, particularly the ones with new democratic governments.<sup>39</sup> Because they can communicate faster and more effectively due to new technology, these nations are better able to provide assistance to each other.<sup>40</sup>

Understanding of the full impact of the Internet in this arena is virtually impossible, however, without first understanding the Internet’s place in the current phenomenon known as “Globalization.”

#### **D. GLOBALIZATION AND TRANSNATIONAL CIVIL SOCIETY**

Will genocide always be with us? Will things change? The answer may lie in a “connectedness” of the whole world that did not before exist. A sense that the “eye,” the “conscience” of the world, as it were, is watching, and is larger and sees deeper than was ever the case in the past. Its vision truly encompasses the world that is the “body”. Is this not the

---

<sup>38</sup> Alexander Boldizar, Outi Korhonen, *Out of a Tangled Skein Into the International: The Development of Legal Culture*, 5 ANN. SURV. INT’L & COMP. L. 163, 203 (1999).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

definition of self-awareness? It is very plausible that at whatever moment Man first gained self-awareness, he was able to reflect upon his body, mind, and spirit as subjectively recognizable aspects of his individual *Self*. Imagine Man unaware of many parts of his body and mind, or aware of their existence only to a fraction, or limited degree; aware only as to the existence of his legs, for example, but unaware of their function; or aware only of his body, but without awareness or any notion of his spirit or of any concept of morality. Is such a state not unlike the state of the globe when one nation was unaware of the people and conflicts on the other side? Is this not in many respects the picture of the world prior to the advance of technology, and in particular, the immediate connectedness made possible by technology?

What is the “eye” of the world? It is instant communication with the whole world; knowing that developments and ideas will be communicated instantly, as by the conduction of a nerve that produces a response, akin to a single mind rather than cells operating in isolation. A person ignorant of a cancer developing in or about another portion of his or her body is soon consumed with affliction and eventual or likely destruction. Was the state of the globe so different when genocide was only learned of or acknowledged after the fact by the next nation, and only under such circumstance that the problem had spread to that nation’s own border? The eye of the world now sees its whole body; the consciousness of the world has developed or is developing something akin to “self-awareness.”

One symptom of this heightened consciousness, this self-awareness, is the current phenomenon identified by some as “globalization.” Thomas L. Friedman, in *The Lexus and the Olive Tree, Understanding Globalization*,<sup>41</sup> proposes that “the world is 10 years old...it was born

---

<sup>41</sup> THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION* (Farrar Straus & Giroux 1999).

when the [Berlin] wall fell in 1989.”<sup>42</sup> His premise is that, coinciding with, and perhaps because of, the fall of communism, the world is remaking itself and interconnecting based on the onslaught of market economics and communication technology: “Today’s era of globalization is built around falling telecommunications costs –thanks to microchips, satellites, fiber-optics and the Internet. These new technologies are able to weave the world together even tighter.”<sup>43</sup>

Julie Mertus<sup>44</sup> identifies globalization as a complex phenomenon with two interrelated sources. The first is “the restructuring of the world economy on a regional and global scale through the agency of the transnational corporation and financial markets.”<sup>45</sup> The second is “the rise of transnational social forces concerned with environmental protection, human rights, and peace and human security.”<sup>46</sup> In addition, Mertus suggests the following developments are dimensions of globalization:

- 1) There is an homogenization of world society, with the result that societies are agreeing on more democratic forms of government and upon the development and use of diplomatic language;<sup>47</sup>
- 2) The importance of the state has diminished in favor of a “transnational” society, with the result that the Human Rights decision-making process includes not just individual states, but non-governmental organizations (NGO’s), intergovernmental organizations (IGO’s), and

---

<sup>42</sup> *Id.* at xiii.

<sup>43</sup> *Id.* at xv.

<sup>44</sup> Julie Mertus, *From Legal Transplants To Transformative Justice: Human Rights and the Promise of Transnational Civil Society* 14 AM. U. INT’L L. REV. 1335, (1999).

<sup>45</sup> *Id.* at 1341 (quoting Richard Falk, *The Nuclear Weapons Advisory Opinion and the New Jurisprudence of Global Civil Society*, 7 *Transnat’l L. & Contemp. Probs.* 333, 335 (1997).

<sup>46</sup> *Id.*

other voluntary associational groups.<sup>48</sup> Increasingly, this apparatus watches for the occurrence of human rights violations, mobilizes and takes action;<sup>49</sup>

- 3) Border patrols have been eased and people are able to travel more and thereby learn new things about different cultures, and as a result are less limited to old customs and prejudices and are more accepting of developing norms of human rights;<sup>50</sup>
- 4) A collision of human rights values; one group's right to nationalism threatens the survival of another group<sup>51</sup>
- 5) The phenomenon of "McDonaldization:" a "consumer-oriented homogenization." Mertus suggests that this phenomenon does not necessarily aid in developing "truly universal standards of human rights," and may actually instead result in a nationalist backlash that could prove detrimental to minority groups existing within nations.<sup>52</sup>
- 6) The Internet gives people the chance to be not merely activists, but "informed activists, unbounded by territory or hierarchy."<sup>53</sup> Expounding upon the pervasive influence and

---

<sup>47</sup> *Id.* at 1344.

<sup>48</sup> *Id.* at 1347-1350. Examples of such NGOs and ICOs include "the State-based Helsinki Committees and Amnesty International, as well as trans-State and sub-State service organizations such as the United Nations High Commissioner for Refugees ("UNHCR"), the Croatian Red Cross, and Save the Children."

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 1346.

<sup>51</sup> *Mertus*, 14 AM. U. INT'L L. REV. at 1343; *See also, supra*, note 34 (This phenomenon is evident in the recent Balkan wars involving the states of the Former Yugoslavia).

<sup>52</sup> *Id.* at 1345.

<sup>53</sup> *See id.* at 1349; (quoting Leon Gordenker & Thomas G. Weiss, *Pluralising Global Governance: Analytical Approaches and Dimensions*, 16 *Third World Q.* 357, 365 (1995)): ("[e]lectronic means have literally made it possible to ignore borders and to create the kinds of communities based on common values and objectives that were once almost the exclusive prerogative of nationalism;"); *See also*, Ronald J. Deibert, *Parchment, Printing, and Hypermedia: Communication in World Order Transformation* 159-63 (1997) ("discussing transnational social movements in hypermedia environment"). *See generally* Jennifer Myers, *Human Rights and Development: Using Advanced Technology to Promote Human Rights in Sub-Saharan Africa*, 30 *Case W. Res. J. Int'l L.* 343 (1998) ("examining recent technological advancements that have accelerated global economic and social development"),



capabilities of the Internet in this transnational civil society, Friedman, relates an amusing but provocative anecdote, in which his grandmother called him sounding upset: “‘what’s wrong mom’, I asked...’well I’ve been playing bridge on the Internet with these 3 Frenchmen and they keep speaking French to each other and I can’t understand them.’ When I chuckled at the thought of my cardshark mom playing bridge with 3 Frenchmen on the net, she took a little umbrage. ‘don’t laugh,’ she said, ‘I was playing bridge with someone in Siberia the other day.’”<sup>54</sup>

The role of the media in changing the “survival” perspective discussed in Mertus’s fourth developmental factor is an example of how competing nationalistic interests, another phenomenon of globalization, exists as a subset of the greater notion of an evolution of mankind’s consciousness. The following news account of the history behind the Chechan conflict provides a current example of this “survival” perspective:

“Russian troops and Chechen insurgents are facing off on the battlefield, but they might as well be fighting in different wars. This is true not only because of the vastly different tactics and strategies used by the two sides, but also because of a basic incompatibility of their societies. ‘This war is about a clash of histories.’ Said Fiona Hill, deputy director of the U.S.-based Eurasia Foundation. ‘It is about one side building up an extensive empire, the other trying to forge a national unity, and each side being totally unprepared for dealing with the other. ‘We need to stop somewhere, as we have been retreating for 15 years.’ Russia’s most celebrated living writer, former Soviet exile Alexander Solzhenitsyn, said recently, capturing the public mood. ‘We have capitulated in 1996. Our country cannot abandon the right to defend itself, and defense means completing the operation in some way.’ But there is a sinister side to the unity behind Russia’s

---

*Mertus*, 14 AM. U. INT’L L. REV. note 73. “Internet user groups, bulletin boards, and websites have constructed a new arena wherein political and social norms are proposed, debated, and determined.” *Mertus*, 14 AM. U. INT’L L. REV. at 1349.

<sup>54</sup> Friedman, *supra*, note 41 at xvi.

hawkish stance toward Chechnya. The indiscriminate shelling and shooting of civilians; the poor treatment of hundreds of thousands of refugees; allegations of looting and of abuse of suspected terrorists goes largely unreported, and uncriticized, in Russian society. ‘For the past 280 years, the Chechens have been suppressed and forced to submit to the Russians,’ said Lieven, author of a book on the 1994-1996 Chechnya war. ‘But whenever Moscow is weak, or too oppressive, they revolt and fight again.’ The conflict is fueled by each side’s romantic view of itself, and basic misperceptions about the other side. For Russians, the Chechens are a bandit nation, forever entrenched in a clan-like society that rejects modern traditions of hierarchical organization and laws. A 19<sup>th</sup>-century czarist general branded them ‘a people who cannot be assimilate,’ and poet Mikhail Lermontov described the ‘evil Chechen, crawling along the bank, sharpening his knife.’ Those stereotypes remain the defining characteristics of Chechens held by Russians.

And the Russian military assault shows no signs of abating, ‘We must not stop,’ said Yevgeny Ganyukov, a Russian major stationed outside Argun. ‘Once we’ve started to pound them, we have to pound them to the end, so that not one living soul remains.’ [A] Chechen [boy] named Musa, all of 4 years old, was asked where his father was. ‘He’s at home, fighting the Russians,’ the child said. ‘And one day, I’ll grow up and fight them, too.’<sup>55</sup>

The media is forcing individuals and groups, whom have traditionally justified their hatred and atrocities with survivalist concerns (a “kill or be killed” mentality), to perhaps for the first time and in a profound way, become aware that other peoples, indeed “The World,” is watching their activities with concern; that “The World” in fact holds a different, dimmer view of what they are doing: namely, that their genocidal practices are not justified by notions of competition and self-preservation, but are in fact inexcusable crimes against humanity. This awareness in turn makes such traditional groups aware that there are other principles at work; principles such as morality and the rule of law. Overall, awareness of each other and each other’s suffering is one of the most dramatic and powerful vehicles behind this increase in the “consciousness of mankind.”

Regarding the McDonaldization phenomenon (Mertus’s Fifth developmental factor),

---

<sup>55</sup> David Filipov and Dmitry Shalganov, *A Clash of Histories*, THE BOSTON GLOBE, (reprinted in THE SPOKESMAN REVIEW, Dec. 9, 1999, A1, 14-15).

Thomas Friedman offers this perspective on what he terms “the Golden Arches theory of conflict prevention.” Namely, that “when a country has a middle class large enough to support a McDonalds, people don’t fight wars anymore, but prefer instead to wait in line for burgers.”<sup>56</sup>

This phenomenon is illustrated by the following account from the April 18, 1999 edition of *The Buffalo News*:

“In a city under NATO attack, a small event can assume great meaning. Take, for instance, the reopening of a McDonald's outlet vandalized last month by an anti-American mob. Or the fact that tens of thousands ignored heavy rain and chilly winds -not to mention a wartime atmosphere -- to cheer runners in the annual Belgrade marathon and an accompanying 3-mile fun run. ‘Let us show them (NATO) that our spirit is high and we are not afraid of their bombs,’ an elderly woman said as she cheered the runners on by waving her umbrella in the air. In a show of sportsmanship, 39 elite athletes chose to run together, crossing the finish line in a pack beneath a banner that read ‘Run for Fun Not From Bombs.’ In a city struggling to adjust to NATO airstrikes and the resulting miseries -- nights in air-raid shelters, gasoline shortages and fraying nerves -- both events brought hopes of a return to normal life in the capital. Dozens of Belgraders lined up for their first fix of fries, shakes and burgers since March 26, when the seven McDonald's outlets in the city closed. That was two days after the first NATO missile struck Yugoslavia, releasing a torrent of anti-U.S. feeling in a city of American fast-food addicts. A mob targeted the McDonald's restaurant in downtown Terazije Square, along with the nearby American Cultural Center and the U.S. Embassy a few miles away, breaking windows and smearing outer walls with anti-American slogans. The center and embassy remain closed. But along with two other outlets, the Terazije McDonald's opened Saturday despite signs that not all was right: windows boarded over; a metal detector at the entrance; police nearby. Belgraders came to eat -- or to stare. ‘This is how America is conquering the world, by food and McDonald's,’ said Dejan Vladovic, 36. ‘I went in just to see if it was open, because I didn't believe it when I walked past,’ said Radomir Kratovac. ‘I'm pleased but also surprised because a lot of people in Belgrade remain resentful of America.’ Kratovac, 35, and others interpreted the reopening as a hopeful sign. ‘It means

---

<sup>56</sup> Friedman, *supra*, note 41 at 196.

that normal life is returning somehow.’

Expressing the same sentiments in more elemental terms, Aleksandar Simeonovic, 4, ate a double-decker burger.

‘Mmm, I missed this,’ he said.

His grandmother, Jelena Simeonovic, 53, said not all Belgraders shared the sentiments of the mostly youthful mob that wrecked the restaurant.

‘I am happy for this day, both for my grandson and because I hope it's a sign things will get better,’ she said.”<sup>57</sup>

Finally, other scholars have also made notable observations relevant to globalization:

Michael Pendleton,<sup>58</sup> notes that as a result of changes wrought by the communications revolution, even the supposedly “parochial” news programs in many countries now focus upon world events;<sup>59</sup> and, Robert A. Araujo, S.J.,<sup>60</sup> observes that the focus of human rights doctrine has moved from concern over property rights, to concern over the individual, noting that property concerns will evaporate if there are no people to enjoy them.<sup>61</sup>

The impact of Globalization on genocidal practice and other war crimes are explored in greater detail in Parts II and III.

## **PART II: THE CURRENT IMPACT OF INFORMATION TECHNOLOGY ON WAR CRIMES**

The goal of Part II is to explore the effects of communication media upon genocide and other war crimes at chronologically progressive and distinct stages or categories of both actual and potential impact, as follows: Prevention of crimes prior to their commencement; actual

---

<sup>57</sup> George Jahn, *Belgrade See Hope in McDonald's Reopening*, THE BUFFALO NEWS, April 18, 1999, at 11A.

<sup>58</sup> See *supra* note 36, at 2052.

<sup>59</sup> *Id.* at 2052.

<sup>60</sup> Professor of International Law at Gonzaga University School of Law.

<sup>61</sup> Lecture on International Law, Gonzaga University Law School, October 25, 1999.

incitement of war crimes; interference with crimes already in progress; exposure of crimes after the fact; and finally, effects upon war crime trials.

#### E. PREVENTING WAR CRIMES BEFORE THE FACT

Media coverage has on occasion prevented war crimes from occurring. The power of the media to prevent events before they have a chance to occur is evoked by the observation of Harvard Professor Amartya Sen: “[T]here has never been a major famine in a free democratic nation with an uncensored press.”<sup>62</sup>

One clearly identifiable instance of the media actually preventing an atrocity occurred in South Korea, in which the media, by helping to create the conditions ripe for the overthrow of the ruling military dictatorship of the country in 1988, almost certainly prevented severe repression of, if not the massacre of, student political demonstrators.<sup>63</sup>

With the 1988 Seoul Olympic games scheduled, South Korean college students in 1987 realized that they could conduct demonstrations against the government without fear of violent repression because international media attention was focused on the country due to the pending Olympic games. The government did not in the end risk a violent suppression of the demonstrations for fear of jeopardizing the country’s image in the eyes of the world. Instead, the military dictator General Chun Doo Hwan resigned. This is particularly significant because it was by a violent and bloody suppression of student demonstrations in 1980 that Chun rose to power. On November 23, 1988, in order to satisfy public opinion, (spread by the media) Chun

---

<sup>62</sup> John Norton Moore, *Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance*, 37 VA. J. INT’L L. 811, 830. (citing Amartya Sen, *Famine as Alienation* (1995) (unpublished paper on file with Prof. Moore).

<sup>63</sup> ARYEH NEIER, *WAR CRIMES* 86-87 (Times Books, 1998).

went on national television to apologize for corruption and human rights abuses, and to announce his retirement to a monastery.<sup>64</sup>

The Internet is another communication source that has been used to attempt to prevent war crimes. Examples of the Internet's quick influence are the numerous East Timor and Kosovo "crisis webpages" that discuss daily events and developments in those countries as the respective crisis unfolded. One news-Internet site devoted to East Timor actually links to a posting entitled "*World leaders contact list: The East Timorese need you to speak out for them.*"<sup>65</sup> The cite provides the names, and other information of 46 world leaders, their phone and fax numbers, and their e-mail addresses.

Some current examples of the prevention of what appeared imminent genocidal crimes include the role information technology has played in shaping the response of the Chinese government to the Falun Gong religious movement. It is evident that media pressure, combined with access of some Chinese to the Internet, as well as economic and political factors,<sup>66</sup> has thus far forestalled the Chinese government from an even more severe crackdown of the movement, including, perhaps, massacres of Falun Gong members. A recent *Washington Post* article suggests that the Chinese Government is deeply wary in its response to the Falun Gong, partly because of media pressure, and moreover, that even within China itself, Internet use has intensified criticism of the Government response to the Falun Gong.<sup>67</sup>

---

<sup>64</sup> *Id.*

<sup>65</sup> <http://etan.org/et99b/leaders.html>

<sup>66</sup> "[A]cts committed with intent to destroy, in whole or in part, a...*religious* group." Article Two, *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. No. 1021, 78 (1951), p.277.

<sup>67</sup> See John Pomfret, *Cracks in China's Crackdown: Falun Gong Campaign Exposes Leadership Woes*, THE WASHINGTON POST, November 12, 1999, at A01. ("The stark numbers illustrate that the crackdown against Falun Gong is by far China's biggest since soldiers crushed student-led democracy demonstrations at Tiananmen Square in Beijing in June 1989. The government has branded Falun Gong 'dangerous' and 'evil' and has mobilized thousands

Another example is the restraint exercised by the Russian leadership in that country's current conflict with Chechnya, as illustrated by this excerpt from the *Associated Press*:

“With Russia under intense international pressure to end its offensive in Chechnya, the military backed away Saturday from plans for a massive assault on the breakaway province's capital, saying it would give civilians more time to escape. In Washington, U.S. Secretary of State Madeleine Albright suggested Western pressure had a role in prompting Russia to hold back in Chechnya. ‘They have a goal. They want to make sure that Chechnya does not keep causing them problems,’ she said on CBS's Face the Nation. ‘On the other hand, I think that they have understood the international pressure to some extent and there is a sense that Russia is becoming isolated.’”<sup>68</sup>

It is apparent that communications media have already prevented potential genocide or other war crimes from occurring, and fortunately, in all likelihood, will continue to do so in the

---

of security personnel and the state-run press to smash the group. Officials have called the movement the gravest threat to Chinese stability in the 50 years of Communist history.

The crackdown was undertaken to demonstrate--and solidify--the power of the Chinese leadership. But the longer the campaign goes on, and the more difficulty China's authorities have in corralling Falun Gong practitioners, the more the episode is exposing China's rulers' weaknesses, insecurities and internal divisions to audiences at home and abroad.

The campaign has revealed dissent at the top echelons of power, undermining the image of China's leadership as united and pragmatic. Communist Party sources said that the Standing Committee of the Politburo did not unanimously endorse the crackdown and that President Jiang Zemin alone decided that Falun Gong must be eliminated.

Some observers believe Jiang picked what he thought was an easy target--Falun Gong and its U.S.-based leader, Li Hongzhi--and his resolve was only strengthened when he learned people close to him were followers of the group. Falun Gong members practice exercises and meditation derived from Buddhist and Taoist disciplines.

Even before the Falun Gong crackdown, Jiang has been subject to intense criticism for weak leadership. In China's Internet chat rooms and on the streets, he is viewed as being soft on Taiwan and the United States.

Jiang's concern over Falun Gong runs so deep that during the Asia-Pacific Economic Cooperation summit in New Zealand in September, he handed out a book attacking the group to many of the participants at the meeting, including President Clinton. The move stunned diplomats, reinforcing concerns that party leaders have become fundamentally divorced from everyday reality and that Jiang is either unwilling or unable to engage in substantive discussions with Western leaders.

‘This guy actually thought we needed to know about this stuff,’ said one Western diplomat.

The campaign has also hastened the sense among ordinary citizens that the party is increasingly alienated from mainstream China. The country's most liberal newspaper, Southern Weekend, has recently published several veiled attacks on the campaign; one was an analysis of Nazi Germany's treatment of Jews and how average Germans allowed it to escalate from discrimination to genocide.

‘What are these people doing?’ said a Chinese reporter who has been forced to cover the crackdown for another mainstream newspaper. ‘It just shows you that the main source of instability in China is the Communist Party’.”

<sup>68</sup> See Associated Press, *Chechen Fighters Digging In*, (republished in THE SPOKESMAN REVIEW, Dec. 13, 1999, at A6).

future. These instances stand in stark contrast to others in which, tragically, the media has actually incited genocide or other war crimes. There is, as explored in the following section, however, a critical distinction in the dynamic whereby communications media brought about, in turn, these profoundly opposite results.

## F. INCITING WAR CRIMES

Discussing the message behind the 1998 motion picture, *Wag the Dog*, (in which the media “manufactures” a “fake” war in order to divert attention from a presidential sex-scandal), producer, Dustin Hoffman explained he was seeking to convey the notion that by virtue of the power of the media, “The Truth” is not the event that really occurred, but what *the media* tells us occurred.<sup>69</sup> As suggested by this statement and the subterfuge explored in the movie, the potential for corrupt use of the media is apparent. Beyond mere dishonesty and corruption, the media has been used to alarmingly evil and tragic effect.

As observed *supra*, Section D, there has been no mass starvation in a nation with a free press. It has been observed as well that the ruling elite in a dictatorship also does not starve in a famine,<sup>70</sup> in so far as such groups or governments are able to use the media to insulate

<sup>69</sup> *Fresh Air* (National Public Radio broadcast, Nov. 11, 1999).

<sup>70</sup> One such example is the regime of Saddam Hussein in Iraq where the ruling elite, themselves are essentially untouched by the sanctions while the ordinary citizens are increasingly impoverished. See, Abdel Darwish, *After Desert Fox, Saddam Still Defiant, Could He Be Toppled?* <http://www.mideastnews.com/toppling.htm>, (“The source of Saddam domestic security is a ruthlessly efficient civilian apparatus modeled on former Eastern Block internal security organizations. Their centralized command run by a largely Sunni Moslem inner circle drawn mostly from the Iraqi president's relatives and members of his clan' the Takriti'. His younger son, Qusay, is the key figure in supervising the security forces. The older is the pathologically homicidal Uday, who is in charge of propaganda, youth organizations and the smuggling network, that has given Saddam a limited but essential source of income, which is used, as well as vast hidden assets all over the world, to bribe the clan, *sic.* and ensure its support. This inner circles is subjected to continuous purges [and] any hint of conspiracy is met with violent reprisal, putting an end to western wishful thinking of an inner circle coup”); See also Larry Johnson, *A Nation Sagging Under the Weight of Sanctions*, SEATTLE POST-INTELLIGENCER FOREIGN DESK EDITOR, May 11, 1999, <http://www.seattle-pi.com/iraq/life1.html>. (“The sanctions, despite the hopes of many Western leaders, have had little apparent effect

Unknown  
Field Code Changed



themselves in times of political hardship.<sup>71</sup>

The power of the press to incite negative action, historically, has been great, not only in dictatorships, but in democratic nations. One early instance of a free press inciting a war occurred in 1898 when the New York Journal, headed by William Randolph Hearst, motivated by a desire to sell newspapers did everything possible to spark public interest so that the United States government would go to war with Spain. When the battleship Maine blew up, perhaps by accident, the New York journal persuaded Americans that Spain was behind it.<sup>72</sup> It is interesting to speculate whether such a result could have occurred in today's world of the Internet. During this 1898 incident, the public was clearly limited to the version of the story provided by the press. Had the incident occurred today, it is likely some versions of the truth might have appeared in Internet chat-rooms, and subsequently found their way to other news media, and eventually, to the government.

It is clear that the influence of the Internet in the recent past often has had little or no effect upon the power of state controlled media to incite war crimes. Tragic examples are evident in the recent conflicts in Serbia, and Rwanda, where government-controlled media has been used to incite genocide. The Milosovic regime in Serbia has enjoyed control over the

---

on Iraqi leader Saddam Hussein. He remains firmly in control, and efforts to find and destroy his weapons are in limbo. But they have had a devastating effect on Iraq's 22 million people. Out-of-work engineers drive taxis, and doctors take second jobs to supplement a salary that, because of inflation, now averages only about \$3 to \$5 per month. And each month thousands of infants are dying of malnutrition-related illnesses that many believe would not be a problem except for the sanctions restricting or bogging down the shipment of food and medicine. 'Ten years ago, malnutrition was almost non-existent,' said Anupama Rao Singh, the United Nations Children's Fund representative in Baghdad. From 1991 to 1998, children under 5 were dying from malnutrition-related diseases in numbers ranging from a conservative 2,690 per month to a more realistic 5,357 per month, according to Singh's figures").

<sup>71</sup> Lt. Col. Susan S. Gibson, *International Economic Sanctions: The Importance of Government Structures*, 13 EMORY INT'L L. REV. 161, 207-208 (1999). (The ruling elite in a nondemocratic nation can protect itself from both economic and political difficulty by suppressing opposition by controlling the media).

<sup>72</sup> Neier, *supra*, note 62 at 20.

media,<sup>73</sup> and in the Balkans, both Serbian and Croatian media invented stories to legitimize genocide by fabricating atrocities and generally demonizing the other side.<sup>74</sup>

In Rwanda, the role of the media in the genocide was perhaps even more pronounced. Radio Mille Collines (formally, Radio Television Libere des Mille Collines RTLM) broadcast messages to government troops and militias to kill all Tutsis, and Radio Rwanda broadcast similar messages.<sup>75</sup> Radio Mille Collines, owned by members of the president of Rwanda's inner circle, sent very explicit messages inciting genocide. Journalist Bill Berkely reported: "[e]ndless speeches, songs and slogans demonized the Tutsis. Hutus were warned that the Tutsis were coming to kill them, take their land, reclaim the dominant role they had enjoyed for centuries..."<sup>76</sup> When an aircraft carrying the Rwandan president mysteriously crashed on April

<sup>73</sup> See Peter Lukovic, *Letter from the War Zone, A Serb asks what's become of his country?*, CENTER FOR WAR, PEACE AND THE NEWS MEDIA, March 28, 1999. <http://www.msnbc.com/news/254148.asp?cp1=1>. (Discussing the control of the Belgrade media during the NATO bombing:

"Radio B92—the only truly independent radio station in Belgrade and a provider of serious political information—was shut down. A few days later in Novi Sad, Radio 21, another radio station which the authorities did not trust, was also closed. Since the attacks began, most of Belgrade's television stations have abandoned their own programming and now rebroadcast state television, RTS channel one. RTS, an infamous nationalistic stronghold, was one of Milosovic's most potent weapons during his previous wars. Now it stirs up nationalist feelings through dramatic displays of patriotism. There is absolutely no news of what's happening in Kosovo, the province Serbia supposedly cares so much about. There is no concrete information on what damage has been done by the bombing. There is not even any news as to what's going on in the Serbian and Yugoslav governments. Instead it broadcasts hard-core propaganda, celebrating 'the firm, dignified politics of Slobodan Milosovic.' NATO nations are now 'fascist aggressors.' The president of the United States now has a range of new titles: 'Killer Clinton,' 'Worm Clinton,' 'Mental case and sexual deviant Clinton'").

<sup>74</sup> See, Neier, *Supra*, note 62 at 198-202.

("The emphasis in RTS [Serbian State Television] coverage was on the defensive nature of Serb activity; the Serbs were 'fighting for freedom,' 'defending' and 'guarding,' protecting their 'native soil' from 'the Muslims,' who were waging a religious war, and wanted to force Serbs to belong to an Islamic state, and from 'the Croats,' who wanted to unite with Croatia and whose anti-Serb fascism was already known." And "like its Serb counterparts, the controlled press in Croatia habitually used provocative terms such as *muhahedin* to label Bosnian forces, suggesting that they were Islamic fanatics. The Croatian media also invented atrocities that never took place...such as a report that 35 Croats were hanged on the square in front of the Catholic Church, for refusing to wear the uniform of the Muslim army, and that Croats and Serbs in Zenica were being forced to adopt Turkish names and to pay large sums for new identity cards.")

<sup>75</sup> *Id.* at 203.

<sup>76</sup> See *id.* (citing Bill Berkeley, "Sounds of Violence," *The New Republic*, August 22 and 29, 1994).

6, 1994, Radio Mille Collines broadcast remarkably explicit messages for Hutus to kill Tutsis.<sup>77</sup>

In a study of the Rwandan genocide, Article 19<sup>78</sup> concluded that the media did not directly cause or incite the genocide, citing specific examples of how the state actually planned the killings far in advance.<sup>79</sup> Radio station RTLM's role rather was "organizing" the killings.<sup>80</sup> Neier concluded, however, that the incitement and the organization of genocide in the case of Rwanda were so closely related that they cannot be separated, pointing out that, Bosco Barayaqwiza, a founder and a director of RTLM, also was a Hutu political party leader who controlled one of the militias that took part in the massacres.<sup>81</sup>

Another, very current example of "malign" use of communication technology is Russian television treatment of the Chechen conflict, as illustrated in the news account, *A clash of histories*:

"The Russian image of the Chechens is encapsulated in the violent footage shown on nationwide news, depicting Chechen captors torturing and murdering their hostages, and enjoying it. One popular program repeatedly played a video of Chechens shooting the fingers off the hand of a small boy, laughing as he pleaded for mercy.

The message: Chechen civilians may be suffering under the Russian military assault, but by their complicity in the chronic lawlessness and violence that took

<sup>77</sup> See *id.* (quoting Gerard Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995), p. 224.). African scholar, Gerard Prunier recorded that Radio Mille Collines broadcast messages such as these: "'You have missed some of the enemies in this or that place. Some are still alive. You must go back there and finish them off,' or 'The graves are not yet quite full. Who is going to do the good work and help us fill them completely?'"

<sup>78</sup> The International Center Against Censorship, *See* 251, <http://www.article19.org/> ([Google](#)).

<sup>79</sup> Neier, at 202. (Times Books, 1998) (citing Broadcasting Genocide: Censorship, Propaganda and State Sponsored Violence in Rwanda 1990-1994, October 1996), p. 166.

<sup>80</sup> See *id.* (For example, before the killing started, the station had a talk-show format with themes designed to instill fear of the Tutsi rebel movement, but no actual call to violence. A few days before the killing began, the station broadcast predictions of violence. Only when the killing started did RTLM actually broadcast calls for violence).

<sup>81</sup> *Id.* at 205.

root in Chechnya during the past three years of defacto independence, they deserve it.

‘Lest you should worry too much about those refugees, I’ll show this videotape again,’ said the show’s anchor, Sergei Dorenko.”<sup>82</sup>

From such accounts, it is possible to conclude that the power of communications media to incite negative action suggests that the media, and information technology, is not ultimately a force that will diminish or halt the practice of genocide; that such communication and technology have not ushered in a new evolution of human consciousness. However, prior to the modern information revolution, state-controlled press and communication had long been a source of negative action and results; inflicting on the world greater evil and suffering, arguably, than the good that had resulted from “positive” use of information.<sup>83</sup>

Power in the hands of a corrupt but powerful few, no matter how potent, and regardless of the evil wrought in the past, has failed to stem the astounding and encouraging results of the use (discussed *Supra*, Part I, Section III), of new information technology, and the resulting world changes. The distinction, precisely, is that evil wrought by information technology is by and large the product of the corrupt, albeit powerful, few, and does not reflect the will and effort of the masses worldwide that have availed themselves of the instant interconnectedness made possible by the Internet, as well as satellite transmission of world television news. It is this use by the masses that has resulted in the remarkable evolution the world is currently experiencing. In this context, it is noteworthy that Africa has the least number of people on-line in comparison with other continents, and Russia/Chechnya, have relatively few net-users in comparison with that of the United States and Canada (see discussion, *Supra*, at Section B). In the same vein, the

---

<sup>82</sup> Filipov, Shalганov, *supra*, note 54, at A14.

<sup>83</sup> Consider the Stalinist and Nazi use of propaganda and information control; And *see generally*, GEORGE ORWELL, 1984 (Harcourt Brace Jovanovich, 1949).

violence in Rwanda, as noted above, began prior to the Internet revolution of 1996.

### G. STOPPING WAR CRIMES IN PROGRESS

Beyond the exposure of war crimes by communications media, (discussed *supra*, Section E), the media has played yet another instrumental role: influencing the processes whereby the rest of the world decides in what manner, if any, by which it will respond. Gordon Baldwin, in a review of *Levie on the Law of War*, proposes that the action that representative governments take is restricted to responses allowed by the “rules of war” established by the Geneva Convention, because “vigorous and critical” media attention is necessary for the public to justify the use of force.<sup>84</sup> This dynamic was apparent during the NATO action in Kosovo when the media supplied citizens of NATO countries with exhaustive reports about seemingly every NATO bomb that missed its military target, allegedly killing civilians.<sup>85</sup>

Worldwide media attention is credited with bringing attention to the 1991 Serbian attacks on Bosnian and Croatian cities, following their declaration of independence from Yugoslavia, prompting then Secretary of State, Warren Christopher, to declare: “[T]he international community will not accept the laying siege of cities and the continued bombardment of civilians, [or] the denial of humanitarian assistance to people in need. . . .”<sup>86</sup> As a result of this pressure, NATO conducted air strikes, in 1995, which proved to be a significant inducement to the

---

<sup>84</sup> Gordon B. Baldwin, 17 WIS. INT’L L.J. 173 (1999). Book Review, *Levie on the Law of War*, Michael N. Schmitt & Leslie C. Green, eds., International Law Studies, Volume 70, Naval War College, Newport, R.I. (1998).

<sup>85</sup> See generally, Richard Norton-Taylor, *NATO Under Fire for Choices of Targets in Kosovo*, (Jan. 7, 2000) <http://www.newsunlimited.co.uk/international/story/0,3604,119640,00.html>.

<sup>86</sup> See Matthew C. Waxman, *Siegecraft and Surrender: The Law and Strategy of Cities as Targets*, 39 VA. J. INT’L L. 353, 399, 400 (1999). (citing, Statement by Secretary of State Warren Christopher, reprinted in 4 U.S. Dep’t of State Dispatch 584 (1993)).

creation of the Dayton Peace Accords.<sup>87</sup>

Interestingly, the Western Press focused heavily on the siege of Sarajevo, and ignored many of the larger “geopolitical issues.”<sup>88</sup> A positive consequence of this was that the Statute of The International Tribunal was amended to authorize the prosecution of “wanton destruction of cities, towns or villages, or devastation not justified by military necessity,” and “attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings.”<sup>89</sup>

The impetus for governments to intervene upon the world stage to halt atrocities exposed by the media has presented a difficult dilemma for Western governments. The United States, for example, was criticized for lack of direct military intervention in Bosnia in 1992 and 1993, but criticized as well for the bombing campaign it conducted in the Kosovo crisis in 1999.<sup>90</sup> Undoubtedly, greater criticism, both within the United States and abroad, would have followed had the United States committed combat troops in Kosovo.

Intervention or action to assuage public outcry caused by media attention has become known as “the CNN effect.”<sup>91</sup> Susan Gibson explains that the resulting action has not always proven to be the best choice, and cites the United State’s intervention in Somalia as an

---

<sup>87</sup> *Id.* at 400.

<sup>88</sup> *See id.* at 412, (Georgie Anne Geyer, For the Media, Bosnia Complexity is a Big Photo- Op, Chi. Trib., Dec. 22, 1995, at 25).

<sup>89</sup> *See id.* (quoting, Statute of the International Tribunal, art 3(b), (c).)

<sup>90</sup> *See Neier, supra*, note 62 at 127-29. (In the last month of his presidency, George Bush sent American troops to Somalia, a move which ensured that American troops would not be sent to stop the bloodshed in Bosnia on the premise that two major troops’ commitments was out of the question. President Clinton’s first major foreign policy challenge was the issue of American response to the Bosnian crisis. The United States military sent the message to Clinton that ‘We do deserts, we don’t do mountains.’ Clinton settled for an arms embargo and airstrikes against Serbian ground positions. Britain and France, which had supplied ground troops for humanitarian assistance were critical of American limitation of its role to airstrikes which they argued would only stir up Serbian resistance against the British and French ground forces, which would bear all of the risk).

<sup>91</sup> *See, Gibson, supra*, note 70 at 184. (citing, Warren P. Strobel, Late-Breaking Foreign Policy: The News Media’s Influence on Peace Operations 11 (1997)).

example.<sup>92</sup> Thomas Friedman also acknowledges the so-called “CNN effect,” suggesting, somewhat cynically perhaps, that American presidents in response to publicity of a crisis, take action merely to satisfy demands for action rather than developing a strategy designed to deal on a long-term basis with the threat or crisis.<sup>93</sup>

The 1999 crisis in Indonesia, in which Indonesian backed militias attacked the populace of East Timor following the independence vote by that region, subsequently prompting foreign intervention, is yet the latest example of pressure upon world government’s to act to stop a large-scale ethnic cleansing. Prior to the outbreak of violence, the situation was under close media scrutiny, and upon the outbreak of violence intervention was relatively swift. Admittedly, the United States and other nations that intervened in East Timor had vital interests at stake,<sup>94</sup> and the United States was certainly reluctant to oppose Indonesia.<sup>95</sup> Thus the main reason for intervention was the worldwide concern with the violence that reached a level that was hard to ignore: “[A] simmering conflict threatening to become a genocide.” With the genocides in Rwanda and Kosovo still fresh, The United States was impelled to act: “It would look really bad to allow a genocide, especially one that is linked to punishment for a people’s vote for

<sup>92</sup> *See id.* (“[D]ocumentation of suffering influenced the United States intervention in that country. Conversely, and ironically, it was the media also, broadcasting images of United States soldiers being dragged through the streets of Somalia that induced the United States retreat from that country”).

<sup>93</sup> Friedman, *supra*, note 41 at 375.

<sup>94</sup> “The prospect that East Timor could stabilize Indonesia—the home to vast natural resources, the world’s fourth largest population, the world’s largest Islamic population, and the keeper of key shipping lanes—is alarming.” Kaari Huus MSNBC *Beyond East Timor, the issues loom larger* (NEED A MORE COMPLETE CITATION HERE) <http://www.msnbc.com/news/309132.asp?cpl=1>.

<sup>95</sup> *See id.* (In 1975, the United States did not oppose Indonesia’s president Suharto’s annexation of East Timor because of the threat of Communism. Because Suharto justified the invasion on the basis that he was trying to prevent the emergence of another Communist state like Cuba, the United States, though it did not recognize the annexation, nevertheless stood by, not willing to jeopardize its relationship with Indonesia. Jakarta, for its part, has tended to side with the United States at the United Nations).

Unknown

Field Code Changed

independence.”<sup>96</sup>

In late October, 1999, the United States State Department sponsored a conference in Washington in an attempt to set up “an international system to prevent genocide, mass killings, and other atrocities that keep repeating themselves around the world.”<sup>97</sup> This conference appears to be a response to the growing worldwide attention to genocide at a deeper level than that of the limited “CNN-type.”<sup>98</sup> The attending nations talked about ways to “identify signs of pending mass violence, ways of stopping it, and ways to help rebuilt tattered nations after a slaughter.”<sup>99</sup> Though no policies were established, Harold Koh, Assistant Secretary of State for Democracy noted it was “a very good starting point.”<sup>100</sup> David Scheffer, the United States Ambassador at Large for War Crimes noted the importance of the timely sharing of reliable information with those responsible for deciding on getting involved.<sup>101</sup>

In many encouraging instances, then, communications media have proven instrumental in motivating, and even inducing, worldwide action aimed at halting war crimes discovered already in progress.

#### H. EXPOSING WAR CRIMES AFTER THE FACT

Tragically, some war crimes, genocides included, are not discovered until they are over, or it is otherwise too late to stop them. Communications media have proven to be one of, if not

---

<sup>96</sup> *Id.*

<sup>97</sup> *See*, Associated Press, *Putting An End To Atrocities*, THE SPOKESMAN REVIEW, November 3, 1999, at A8. (The United States may have been motivated to gather this conference to divert attention to the fact that it has not ratified the The International Criminal Court).

<sup>98</sup> *See id.* (Harold Koh, Assistant Secretary of State for Democracy, Human Rights and Labor was quoted: “I think what everybody is saying is that we are sick of dealing with this.”)

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*



the most, influential factor in exposing these crimes.

Prior to the contemporary communications media revolution, media attention still exerted influence on United States policy. During the Vietnam War, media attention to the Mai Lai massacre, in combination with growing perceptions in elite circles that the costs of involvement outweighed the benefits, did produce action by the United States, but only a “half-hearted self-enforcement at low command levels.”<sup>102</sup> At that time there was no CNN, nor Internet, nor interconnected world-community. The response to a crime of this level by the United States military today would likely garner much greater attention, both within the United States, and worldwide. Seemingly, the activity of NGOs and ICOs with worldwide membership, including citizens formerly silenced by repression in the East-Block, will account for this difference.

The terrorist bombing of Pan Am flight 103 over Lockerbie Scotland, in 1988, is a good example of media pressure, disseminating information about war crime suspects that resulted in an outcry for justice. By 1991, forensic evidence indicated two Libyan intelligence agents were responsible for the crime.<sup>103</sup> Between 1988 and 1991, the influence of CNN had increased<sup>104</sup> though the Internet *revolution* had not yet begun.<sup>105</sup> There was a significant outcry in the Western media for the punishment of Libya and the two suspects.<sup>106</sup>

---

<sup>102</sup> Richard Falk, *Telford Taylor and the Legacy of Nuremberg*, 37 COLUM. J. TRANSNAT'L L. 693, 712 (Citing, Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* 13-14, 122-53 (1970)).

<sup>103</sup> Eric Zubeil, *The Lockerbie controversy: Tension between the International Court of Justice and the Security Council*, 5 ANN. SURV. INT'L & COMP. L. 259, 260 (1999). (citing George J. Church, *Solving The Lockerbie Case*, Time, Nov. 25, at 62). One was Abdel Basset Ali lal-Megrahi and the other Lamem Khalifa Fhimah.

<sup>104</sup> CNN's reporting from Baghdad in the Gulf War in 1991 was a new and innovative technique that boosted the name and reputation of the network.

<sup>105</sup> Prior to 1996, maximum modem capacity was 14.4k, compared to the present capacity of approximately 56k which makes Internet surfing much faster. 14.4k was almost a prohibitively slow speed.

<sup>106</sup> See, Zubeil, 5 ANN. SURV. INT'L & COMP. L. at 260-61. (A November 14, 1991, article in Newsday quoted an L.A. Times story that U.S. authorities had connected the bombing to Abdulla Sanussi, a brother in law of Gaddhafi,

As well as bringing to light specific incidents of war crimes, the media has called attention to *types* of activities and helped identify them as war crimes. Media and the Internet were instrumental in publicizing information regarding the use of rape as a tool of warfare, bringing attention to the deliberate targeting of civilians based on ethnic or national backgrounds,<sup>107</sup> and also to a perceived gap in international war-crime legislation covering the act of rape.<sup>108</sup>

Media attention was responsible as well for focusing attention on the continued existence

---

and the head of Libyan intelligence. Significant amounts of the forensic evidence, though an incomplete picture of what happened, were released to the press. A November 25, 1991, article by George Church, printed in Time Magazine released additional details of the plot and evidence of connection to Libya and asked ‘how can he [Ghaddafi] and his regime be punished?’).

<sup>107</sup> See, Mertus, *supra*, 44 at 1350; See also, Neier, *supra*, note 62 at 177: (“One chilling detail that emerged from accounts by [Bosnian rape] victims was that some rapists told them that they would give birth to ‘little Chetniks.’ [a Serbian order known for genocidal practices against Bosnians]. “Such boasts by Serbian soldiers were gratuitous acts of cruelty, intended to cause additional suffering. But the press stories aroused suspicion among some feminists and others that more was involved—that there was a conspiracy by Serb forces to impregnate Muslim women and make them bear Serb children. The speculation was that detentions were deliberately prolonged to prevent timely abortions. It was reminiscent of events more than twenty years earlier, when forced impregnation was widely reported during the war for Bangladesh’s independence from Pakistan. According to accounts then, the number of Bangladeshi women raped by Pakistani soldiers ranged into the hundreds of thousands, and thousands of children were born as a consequence. The number of births reflected both the confinement of some of these women in detention camps until it was too late to terminate their pregnancies and a lack of access to abortions. According to reports at the time, some rapists then told their victims that they would give birth to ‘true Muslims’”).

<sup>108</sup> Mertus, 14 AM. U. INT’L L. REV. at 1350; See also, Neier, *supra*, note 62 at 179-80. (Rape in Bosnia was an urgent concern of feminists because of confusion as to whether it was a war-crime: The word spread through the media that rape was not covered by the Geneva Conventions, and many newspapers began to call for an amendment to the Convention: “It is true that the word ‘rape’ does not appear in the war crimes provisions of the Geneva Convention. But international law generally recognizes that rape is covered by the language of the Fourth Geneva Convention, which designates ‘willfully causing great suffering or serious injury to body or health’ and ‘inhuman treatment’ of civilians as grave breaches of the convention. When used to coerce detainees to furnish information, rape also may be a grave breach under other provisions, such as the prohibition against torture. In Bosnia, where the purpose was ‘ethnic cleansing,’ rape could be covered as well by Additional Protocol 1 of 1977, which provides that grave breaches include ‘inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.’ The word actually does appear elsewhere in the conventions. Article 27 of the Fourth Geneva Convention provides that ‘women shall be protected in particular against rape, enforced prostitution or any form of indecent assault.’ This language is repeated in Article 76 of the First Additional Protocol. By explicitly prohibiting such practices, the conventions help to make it clear that the general language designating ‘willfully causing great suffering or serious injury to body or health’ in the section listing grave breaches is intended to cover rape”).

of forms of slavery in different parts of the world.<sup>109</sup> Among the reports were that in Mauritania, in 1997, some 90,000 people descended from slaves were in servitude without pay.<sup>110</sup> In 1997 a human rights Special Rapporteur reported that there was still a significant amount of slavery in the Sudan.<sup>111</sup> This attention prompted an assertion by the United States, at a 1997 Meeting of the U.N. Human Rights Commission, that the governments of Mauritania and Sudan had failed to rectify the problem.<sup>112</sup>

The media has spurred the conscience of the nations, pushing nations that might have done nothing, to punish atrocities or otherwise take action. As such, the media is perhaps “building” a conscience where there was not one before. It was not until the media directed worldwide attention to the atrocities in Sarajevo that the U.N. and powerful countries were galvanized to start a war crimes tribunal.<sup>113</sup> In *Never Again: Questioning the Yugoslav and Rwanda tribunals*, Makau Mutua writes:

“The Yugoslav and Rwanda Tribunals were not established because of the United Nations, or the powerful states that control it. They were not established because of an intrinsic value on punishing war criminals or upholding the rule of law. Rather, the mobilization of shame by non-governmental organizations and especially the grisly pictures beamed to the world by the television camera created

---

<sup>109</sup> Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 321-22 (1999).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See, Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMP. INT'L & COMP. L.J. 167, 173 (1997). (reporting: “UN soldiers and civilian personnel who witnessed and reported...accounts of [human rights] violations to their superiors were told to be passive because they had no authority to intervene or stop the abuses,” and “it was not until July 1992 that the world would learn of the scale of atrocities in the former Yugoslavia, thanks to the work of print and television journalists, and especially Roy Gutman of New York Newsday.” Television cameras showed pictures of “hundreds of emaciated men behind barbed wire, their eyes hollow from hunger and despair”).

a public relations nightmare and made liars of the centers of Western civilization. The point is made by two writers of the Yugoslav Tribunal who were [c]lose observers of the Security Council reactions to published and televised reports of mass rapes, murder, and torture as part of the systematic Serbian program of "ethnic cleansing" reminiscent of the Nazi genocide. Once the political will of the major powers was mobilized by public shame and public outrage, Security Council resolutions provided the legal basis for speedy action."<sup>114</sup>

A current experience of self-examination by the people of the Netherlands over a human rights issue provides an excellent example of the galvanization of a nation on a human rights issue, as spurred, on multiple levels, by communications media. The controversy is over the response of Dutch peacekeepers, or more aptly, their lack of response to a massacre of Bosnian Muslims by Serbian forces. It serves as an example of public opinion mobilizing a nation to face its complicity, as it were, in the commission of war crimes by another nation. In this instance, it is apparent that The people of The Netherlands have been induced by two types of communications media to examine the role of their nation in this incident: 1) News reports brought the scandal to the attention of the populace; and 2) Pop-films, examined the incident in more critical detail.

The incident involved the mid-Nineties Balkan conflict, wherein the United Nations had set aside the Eastern Bosnian enclave of Szebrenica as a "safe haven" for approximately 30,000 Bosnian Muslim refugees, and assigned 300 Dutch Soldier to protect the camp.<sup>115</sup> Claiming that they were badly outnumbered by the Serbians, and that the U.N. mandate prevented them from engaging in combat, and that NATO air-support was lacking, the Dutch peace-keepers stepped aside and allowed Bosnian Serb forces to enter the camp, cart away and massacre approximately

---

<sup>114</sup> *Id.* at 174.

<sup>115</sup> Anthony Deutsch, *Srebrinica Cries Out*, ASSOCIATED PRESS, reprinted in THE SPOKESMAN-REVIEW, Dec. 2, 1999, at A2.

8000 refugees over the course of one week.<sup>116</sup>

Despite the situation faced by the Dutch peacekeepers, the massacre has scandalized the Netherlands, “rekindling a sense of national rage and shame in the Netherlands.” This year’s Amsterdam Annual International Film Festival has presented films revisiting the massacre, including, *A Cry from the Grave*, featuring interviews with survivors of the massacre.<sup>117</sup>

As noted, the involvement of the communications media in this case occurred on multiple levels. First, media pressure was responsible for the United Nations presence in Bosnia, as discussed above. After the massacre, Media again brought the matter to the attention of the Dutch public, creating the artistic treatment of the subject, another communicative-medium, during the film festival.

In exposure of massacres and genocide, rape and slavery, then, the media has overturned many stones concealing grave and tragic crimes. The human response, including the creation of the criminal tribunals, and also the expository film-art in Amsterdam, represent, hopefully, a responsory rise in the level of human consciousness.

## I. INFLUENCING THE PUNISHMENT OF WAR CRIMES

A trial of the alleged criminal perpetrators or actors represents, in a sense, the “final stage” of a war crime. Communications media have affected this process in two distinct ways: 1) bringing needed publicity to the process, on the one hand, and 2) introducing what has often proven a disruptive prejudicial influence to the trial process.

As discussed *supra*, Section G, the media has proven influential, if not indispensable, in

---

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

creating the international war crimes tribunals. Jose Alvarez, in *Crimes of State/Crimes of Hate: Lessons from Rwanda*, appears to imply that in order for countries to respect the authority of ad hoc tribunals, a certain amount of notoriety vis-à-vis media coverage is helpful or even necessary, facilitating international justification and acceptance of the trial process.<sup>118</sup> Alvarez noted that the trial of Dusko Tadic,<sup>119</sup> the first trial conducted by an ad hoc tribunal, “suffered from dwindling press coverage.”<sup>120</sup> Another ad hoc committee, The International Criminal Tribunal for Rwanda (ICTR) appears to have received less media attention than that received by Rwanda’s public execution of individuals found guilty of the 1994 genocide.<sup>121</sup> This disparity was particularly problematic to those claiming that the ICTR represented meaningful justice, considering that the tribunal lacked adequate representation of Rwanda’s legal system,<sup>122</sup> and by a combination of these factors were of limited benefit to Rwandan society.<sup>123</sup>

Not enough media attention is one problem. *Too much* media attention in the realm of war crime trials has produced a different and problematic set of concerns. One problem is that demand by the public and the media itself for immediate action and punishment of the accused, can conflict with principles of international law professing that the accused are innocent until

---

<sup>118</sup> Jose E. Alvarez, *Crimes of State/Crimes of Hate: Lessons From Rwanda*, 24 YALE J. INT’L L. 365, 417 (1999).

<sup>119</sup> A jailer at the Serbian-run Omarska death camp in northeastern Bosnia, was accused of rape, murder and torture of Bosnian-Muslim prisoners. He reportedly smashed inmate’s heads with a hammer, forced prisoners to drink motor oil, and in an act so barbarous that it shocked the world, forced one prisoner at knifepoint to bite off the testicles of another while prison guards played a popular Muslim song “Let Me Live, Don’t Take Away My Happiness.” Many witnesses in the camp heard the inhuman screams of the victim over the music, and the cheering of prison guards. MICHAEL P. SCHARF, *BALKAN JUSTICE* xi-xii (Carolina Academic Press, 1997).

<sup>120</sup> Alvarez, *supra* note 117, at 417.

<sup>121</sup> *Id.*

<sup>122</sup> See, UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 10. (“Everyone is entitled in full equality to a fair and public hearing, by an *independent and impartial tribunal*, [italics, mine] in the determination of his rights and obligations of any criminal charge against him”).

<sup>123</sup> Alvarez, *supra* note 117, at 417.

proven guilty.<sup>124</sup> This was evident in the outcry by press and public for punishment of the Libyan suspects in Bombing of Pan Am flight 103 over Lockerbie, Scotland,<sup>125</sup> discussed *supra*, Section G.

Discussing traditional and constitutional protections of the trial process against government invasion, Paul Barent notes that The European Convention on Human Rights, Article 6(I) states: “In the determination of his civil rights and obligations of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.”<sup>126</sup> The “public” aspect of the trial, he proposes, includes “the right of the press and public to be admitted to court proceedings to prevent judicial arbitrariness and to protect the parties.”<sup>127</sup>

The Statute of the International Court of Justice (I.C.J.) also provides some right to a public trial.<sup>128</sup> In weighing the ‘interests of the media and public in access to information’ against the ‘guarantee of fair criminal trial procedure,’ it is apparent that juries are more likely to be vulnerable to prejudicial media reports of a trial than are judges.<sup>129</sup> Significantly, however, the Statute for the I.C.J does provide a *right* to a jury.<sup>130</sup> These courts are, perhaps, not in as

---

<sup>124</sup> See, UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 11 (1): (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.” See also, COVENANT ON CIVIL AND POLITICAL RIGHTS, Article 14.2: (“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”).

<sup>125</sup> Zubel, *supra* note 102, at 260.

<sup>126</sup> Barent, *supra* note 3, at 215.

<sup>127</sup> *Id.*

<sup>128</sup> See, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, Art. 46. (“The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted”).

<sup>129</sup> Barent, *supra* note 3, at 223.

<sup>130</sup> See STATUTE OF THE INTERNATIONAL COURT OF JUSTICE Art. 50. (“The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an

much danger of miscarrying justice due to media publication of irrelevant information.<sup>131</sup>

Finally, it is apparent that media-coverage of war crimes trials can actually compromise the safety of witnesses. Media publicity in the Celebici Camp<sup>132</sup> war crimes trials,<sup>133</sup> produced just such a result. After the court granted a motion, jointly proposed by both prosecution and defense, that the names of witnesses not be disclosed to the media, a subsequent leak to the media of a list of protected witnesses forced the court to accept an inconclusive investigation into the identity of the responsible parties.<sup>134</sup>

As outlined in this Part, communications media have had a staggering effect within the arena of war crimes. Though some of this effect, such as incitement to war crimes and compromise of the war crimes trial process, has been negative, most of this influence has been profoundly beneficial, as demonstrated by instances of prevention before the fact, intervention during the process, exposure after the fact, and, increasing public interest in the adjudicative process.

---

enquiry or giving an expert opinion"); *See also*, Art. 55 (1). ("All questions shall be decided by a majority of the judges present").

<sup>131</sup> *See id.* (A possibility that Barent proposes could "make nonsense of the rules of evidence.")

<sup>132</sup> *See* Sean D. Murphy, *Progress and Jurisprudence of the International Criminal Tribunal For The Former Yugoslavia*, 83 AM. J. INT'L L. 57, (1999) (A War crimes trial before The International Criminal Court For The Former Yugoslavia: "In the Celebici Camp case, the trial chamber found that the doctrine of command responsibility encompasses not only military commanders, but also civilians holding positions of authority, and can have a de facto as well as a de jure character (Celebici Camp, Nov. 16, 1998, paras. 363, 378). In that case, the chamber convicted Zdravko Mucic on several counts of murder and torture on a theory of command responsibility emanating from his position as commander of the Celebici camp. According to the trial chamber, Mucic had a duty to ensure the proper treatment of prisoners at his camp and was derelict in that duty by allowing those under his authority to commit heinous offenses, without taking any disciplinary action against them. At the same time, when sentencing, the chamber took into account as a mitigating factor that Mucic had not been named by any witness as an active participant in any of the murders or tortures for which he was charged with responsibility as a superior. By contrast, the trial chamber acquitted Zejnir Delalic of all charges of command responsibility, finding that he had not exercised sufficient command and control over the Celebici camp.")

<sup>133</sup> *Id.* at 85.

<sup>134</sup> *See id.* (It was believed that the defendant may have leaked the list, but because no evidence was found, the court declined to hold the defendant in contempt).



### **PART III: THE FUTURE IMPACT OF INFORMATION TECHNOLOGY UPON WAR CRIMES**

The Goal of Part III is to examine the current state of International law affecting the media, and, to speculate on what the future holds for the struggle against genocide in light of communications media and the evolution in Mankind's consciousness.

#### **J. INTERNATIONAL PROTECTION OF THE RIGHT TO USE INFORMATION TECHNOLOGY**

In some form, freedom of expression is protected, or at least addressed in the constitutions of most nations.<sup>135</sup> However, many constitutions around the world that are based on the Constitution of the United States or another Western country may not reflect a true adoption of the tenets, values and practices written therein.<sup>136</sup> In addition, "[t]he right to free

---

<sup>135</sup> Julie Mertus, *Human Rights: Group Defamation, Freedom of Expression and the Law of Nations: What International and Domestic Laws Can Teach The United States*. 21 HOUS. J. INT'L L. 581 (1999) (reviewing Thomas Jones. Boston: Martinus Nijhoff (1998)).

<sup>136</sup> *See id.* (Noting several "waves" of adoption of Western constitutions by non-Western nations. The first was after World War II, when the victorious powers imposed their constitutional systems on the vanquished. The second was in the 1960s, when colonial powers departing from former territories, imposed a copy of their own constitution on the new nation. The third wave of "transplant" constitutions occurred after the fall of the Soviet Block. In many cases these nations were penalized or rewarded correspondingly by the West to the extent that that nation adopted or followed the Western-imposed constitution. There are inherent flaws in this practice: "None of these models worked well to foster positive social change in Latin America. One of the major failings of the law and development movement was its failure to understand that multiple kinds of law can co-exist in society. Law reformers from the outside cannot begin to understand how unwritten community codes for behavior intersect with and influence formal law. As a result, they cannot see how their proposed legal changes will be filtered through more powerful social networks and other social structures. Another failure of the law and development movement was the inability to appreciate that locals act according to their own self-interest. Local people are actors and not mere subjects; they "generally (turn) American legal assistance to their own ends." For example, authoritarian forces in Latin America used the law and development movement to solidify power and control. Ultimately, the agenda backfired because instead of promoting democracy, the law and development movement served to strengthen the hold of anti-democratic elites. Mertus suggests, generally, that Western constitutional ideas and laws have been beneficial to other nations, within limits, but the West may be able to learn something from laws and customs of other nations.)

speech stands as a general norm of customary international law,<sup>137</sup> and is protected in the following human rights instruments:

- 1) The Universal Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>138</sup>
- 2) International Covenant on Civil and Political Rights: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>139</sup>
- 3) European Convention for the Protection of Human Rights and Fundamental Freedoms: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."<sup>140</sup>
- 4) American Convention on Human Rights: (hereinafter American Convention). "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing,

---

<sup>137</sup> DAVID JONES, HUMAN RIGHTS: GROUP DEFAMATION, FREEDOM OF EXPRESSION AND THE LAW OF NATIONS 37, (Boston, 1998).

<sup>138</sup> G.A. Res. 217 (III), U.N. Doc. A/810, art. 19, at 74-75. (1948).

<sup>139</sup> Opened for signature Dec. 19, 1966, 999 U.N.T.S. 171, art. 19(2), at 178 (entered into force Mar. 23, 1976).

<sup>140</sup> Opened for signature Nov. 4, 1950, 213 U.N.T.S. 221, art. 10(1), at 230 (entered into force Sept. 3, 1953).

in print, in the form of art, or through any other medium of one's choice."<sup>141</sup>

- 5) Organization of African Unity: Banjul Charter of Human and Peoples' Rights: "Every individual shall have the right to express and disseminate his opinions within the law."<sup>142</sup>
- 6) International Convention on the Elimination of All Forms of Racial Discrimination: [the] "right to freedom of opinion and expression."<sup>143</sup>

The first four of these provisions clearly protect the rights of the media as well as the rights of individuals, and it appears that the latter two can be similarly construed. Moreover, the language of all six documents appears to protect the right of individuals to use the Internet. As discussed, *supra*, Section H, however, there is a corresponding need for the influence not to unjustly interfere with or damage state or international legal functions. This necessity is reflected in the International Court of Justice's interpretation of Article 41 of its charter Statute<sup>144</sup> as conferring jurisdiction on itself to "grant every procedural safeguard to the alleged perpetrators and to protect them from the hasty judgments of public opinion or the mass media."<sup>145</sup>

It is significant as well that the Universal Declaration of Human Rights, and the Covenant

<sup>141</sup> Opened for signature Nov. 22, 1969, 1144 U.N.T.S. 143, art. 13 at 148-49 (entered into force July 18, 1978).

<sup>142</sup> June 27, 1981, 21 I.L.M. 58, art. 9(2), at 60. (1982).

<sup>143</sup> Opened for signature Mar. 7, 1966, 660 U.N.T.S. 195, art. 5(d)(viii), at 222 (entered into force Mar. 12, 1969).

<sup>144</sup> Art. 41 States: "(1) The Court shall have the power to indicate, if it considers that circumstances so require, and provisional measures which ought to be taken to preserve the respective rights of either party. " 1946 I.C.J. Acts & Docs. 41.

<sup>145</sup> See Zubel, *supra* note 102, at 271. "(citing International Court of Justice: Order With Regard to Request For the Indication of Provisional Measure In The Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From The Aerial Incident at Lockerbie (Libya v. United States), Apr. 14, 1992, 31 I.L.M. 662, 665-66)." *Id.*

on Civil and Political Rights, written by Westerners from a Western perspective, provide for the protection of the media, while a “companion” document, as it were, the Covenant on Economic, Social, and Cultural Rights, written by Easterners and reflecting an Eastern perspective, provides no such protection.<sup>146</sup>

As reflected by the differences in these human rights laws it is important to keep a variety of perspectives on human rights issues. Because much technology originated in the West, and influential worldwide programming such as BBC and CNN are Western, and because Western citizens have greater access to information technology in general, human rights issues have a decided Western slant. To overlook or suppress non-Western perspectives is to risk alienating non-Western allies on human rights issues.<sup>147</sup>

Arguably, Western “coercion,” as it were, and the resulting alienation of a non-Western nation is evident in the current Western imposition of sanctions on the ruling Taliban party in Afghanistan, as illustrated by the following Associated Press account:

“Protesters angered by U.N. Sanctions burned a U.N. office to the ground Monday, set effigies of President Clinton ablaze, and scuffled with Taliban troops guarding the world body’s buildings and equipment. The sanctions virtually cut whatever remaining links Afghanistan and its impoverished people had with the outside world. They ordered the Taliban’s overseas assets frozen and banned flights owned, leased or operated by the Taliban. Exemptions to the flight ban would be permitted for humanitarian reasons or to allow the Islamic pilgrimage to Mecca. With the end of the international flights, all mail in or out of Afghanistan

---

<sup>146</sup> See Optional Protocol To The International Covenant On Civil And Political Rights, 999 U.N.T.S. 171, 6I.L.M. 383 (1967); See also UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS 35 (United Nations, New York, 1988), (discussing, how language in the third paragraph of the preambles to each of the International Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, “are intended to underline the unity of the two covenants while at the same time maintaining the distinctive character of each.” Also discussed is the fact that the Covenant on Civil and Political Rights more clearly “defines the admissible limitations or restriction in the rights which it sets forth”).

<sup>147</sup> See A.M. Weisburd, *Implications of International Relations Theory for the International Law of Human Rights*, COLUM. J. TRANSNAT’L L. 45, 107-08 (1999).

comes to a halt. The Taliban say the sanctions will affect people's ability to buy food and will hurt the poor the most. Impoverished by 20 years of relentless war, Afghans say even limited sanctions will be backbreaking. The Afghan currency, the Afghani, weakened in anticipation of the sanctions, dropped from 43,000 Afghani to the U.S. dollar to 51,000. That has driven the cost of food up – a blow for Afghans, most of whom do not have jobs and make very little money. The Taliban say they won't turn over bin Laden because Afghan culture and tradition makes it impossible to hand over a guest to his enemies. They also argue they do not have an extradition treaty with the United States. The Taliban used the occasion to allow music to return to the airwaves for the first time since they took control of the capital, Kabul, in 1996. The religious army's Radio Shariat played an anti-American tune that warned that Afghans would get revenge, 'even if it takes 100 years.'<sup>148</sup>

Relatively recent rulings and opinions by various international courts have upheld, on human rights principles, the freedom of the media from intrusive legislation or other interference. One such case is *Informationsverein Lentia v Austria*,<sup>149</sup> a European Court of Human Rights decision, over the issue of whether the right of broadcast license applicants in Austria to freedom of expression, as guaranteed by Article 10 of the European Convention, was violated by legislation in that country that effectively established a public broadcast monopoly.<sup>150</sup> The Court held that there was a violation on the ground that the monopoly constituted "a disproportionate and unnecessary interference with the freedom of expression in a democratic society," concluding that "Freedom of expression plays a fundamental role in a democratic society especially where, through the wide broadcast of audio-visual media, it serves to impart information and ideas of general interest which the public is entitled to receive."<sup>151</sup> In

<sup>148</sup> Amir Shah, *Afghans React with Violence*, ASSOCIATED PRESS, (reprinted in THE SPOKESMAN REVIEW, Nov. 16, 1999, at A4).

<sup>149</sup> (Series A, No 276; Application Nos 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90), EUROPEAN COURT OF HUMAN RIGHTS, 17 EHRR 93 (1994).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

addition the court provided the guideline that “Whilst States enjoy a margin of appreciation in assessing the need for interference, where, as in this case, the rights and freedoms guaranteed are important, the supervision of any interference must be strict and the necessity of any interference must be convincingly established.”<sup>152</sup>

An advisory opinion issued by the Inter-American Court of Human Rights<sup>153</sup> at the request of Costa Rica, provides another example of review of a media-rights issue by a human-rights court. In this case, the court held that compulsory licensing of journalists, wherein journalists and reporters were required to belong to “an association prescribed by law for the practice of journalism” violated Article 13(2) of the American Convention on Human Rights where such restrictions *were not* “so framed as *not* (italics mine) to limit freedom of expression more than...necessary or proportionate to their legitimate objective.”<sup>154</sup> The Court found that the Costa Rican law conflicted with the Convention by “restricting in a manner not authorized by Article 13(2) the right to freedom of thought and expression of each individual and because it unduly limits the right of the public at large to receive information from any source without interference,” and also that, “[t]he 'necessity' of restrictions imposed under Article 13(2) depends on showing...they are required by a compelling governmental interest which clearly outweighs the social need for the full enjoyment of Article 13's guarantees,” and finally that “such restrictions must be so framed as not to limit freedom of expression more than is necessary or proportionate to their legitimate objective.”<sup>155</sup>

---

<sup>152</sup> *Id.*

<sup>153</sup> *Compulsory Membership of Journalists' Association* (Advisory Opinion OC-5/85) INTER-AMERICAN COURT OF HUMAN RIGHTS, 8 EHRR 165 (1986).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

As demonstrated by the efforts of international legislative and judicial bodies, mankind has made revolutionary strides in the advancement of human rights. However, as demonstrated by the alienation caused by the pro-Western slant, it is clear as well that future improvements will be necessary.

### K. THE FUTURE

Media coverage, especially television, has proven an increasingly powerful tool in the fight against human rights violations.<sup>156</sup> Conversely, a lack of media attention to human rights violations can result in a lack of public knowledge, interest, and international attention, notable examples being the holocaust in World War II, as well as the more recent genocides in Bosnia and Rwanda.<sup>157</sup>

In the United States the media carved for itself a new role, beginning with the Vietnam conflict.<sup>158</sup> During that war, the media abandoned the tradition of attaching itself to the military as merely an instrument of propaganda.<sup>159</sup> Currently, as discussed, *supra*, Section H, the Western media has operated very independently of government control, to the extent that CNN actually broadcast from inside Baghdad during the Persian Gulf War.<sup>160</sup>

Many challenges remain, and as such, are caveats, as it were, in future efforts against

---

<sup>156</sup> See Wendy Pitcher Wilson, *The Deportation of "Eritreans" From Ethiopia: Human Rights Violations Tolerated by the International Community*, 24 N.C. J. INT'L L. & COM. REG. 451, 494 (1999). (discussing how more media coverage might have induced an outcry against, and perhaps prevented, the mass deportations of Eritreans from Ethiopia).

<sup>157</sup> Andrew R. Willard & Siegfried Wiessner, *Policy-Oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity*, 93 AM. J. INT'L L. 316, 328 (1999).

<sup>158</sup> Neier, *supra* note 62, at 201.

<sup>159</sup> *Id.*

<sup>160</sup> See *supra* note 95.

genocide and other war crimes:

- 1) It is nearly impossible to accurately report a genocidal conflict that has already started.<sup>161</sup>
- 2) Media focus on the aggression of one side in a conflict could have the result of glossing over criminal acts and guilt on the other side.<sup>162</sup>
- 3) The media can downplay a genocidal crime, portraying it, for example, as merely a civil war, as occurred in Rwanda.<sup>163</sup>

These caveats have arisen from and apply mostly to the effect of print and television sources, and accordingly, an increasingly hopeful development is the Internet. Increasingly, the Internet, both as a media-tool, and a tool allowing individuals around the world to educate themselves and in turn to share information and communicate with a diverse population of other people, is revolutionizing efforts against war crimes. In this regard, the impact of the Internet on human rights may be superior even to the that of Television: All of those involved in a genocidal crime...i.e., the victims, the aggressors, and the observers, to the extent of their Internet access, have the ability to monitor, comment on, and debate developments, on a day to day, a moment to moment, basis. Because such communication is instant, it is increasingly seldom that the world will not learn of the crime at all, or only learn of it after the fact.

---

<sup>161</sup> Bjornson, Books Review, 40 HARV. INT'L L.J. 325, 327 (1999).

<sup>162</sup> See Waxman, *supra* note 85, at 400. (citing Alexander Cockburn, Editorial, When Serbs Are Cleansed, It's Silence; Contrary to Media Accounts, the Serbs Are Not the Only Force of Evil in the Bosnian Conflict, L.A. Times, Sept. 28, 1995, at B9).

<sup>163</sup> Arlene Kanter & Theogene Rudasingwa, *Fifty Years of the U.N. Convention: What Does It Mean For Africa*, 26 SYRACUSE J. INT'L L. & COM. 173, 188 (1999).



The following excerpt from an interview with a Belgrade resident is a good illustration of the changes the Internet has wrought upon traditional notions of conflict and warfare, and increasingly, war crimes, including genocide:

“Even through the years of communism, Belgrade was known as the most liberal of cities...the center of techno-happenings, art performances, current world-cinema premieres. We know that Shakespeare is in love. We have all the Top 40 hits. There are hundreds of different restaurants, clubs and bars. Young people hang out in Internet cafes and surf world news, the latest music and pornography.”<sup>164</sup>

The article ends with the observation that the war has a surreal aspect in so far as the telephone lines enabled Internet links to continue to function throughout the war though the city experienced significant war-time deprivations: “One can communicate with the U.S., a country with which we have broken off diplomatic relations, but it is very difficult to call a friend some 100 kilometers south of Belgrade.”<sup>165</sup>

This situation is a case in point about the influence of modern technology: the Internet potentially provides an alternative to the restriction and repression of information imposed by the state seizure of independent radio and television. Besieged residents of Belgrade with the sophistication to work a computer in an Internet café had the capability to learn that there were actually atrocities being committed in Kosovo, despite the government blackout of or spin upon this information. During the war a Belgrade surfer could debate citizens in the United States in a chat-room and so begin to de-demonize “the enemy.” That surfer is likely to spread the information to his or her friends and neighbors.

---

<sup>164</sup>. Peter Lukovic, *Letter from the War Zone: Belgrade; A serb Asks What's Become of his Country*, MSNBC Center for War, Peace and the News Media, (March 28, 1999) <<http://www.MSNBC.com/news/254148.asp?cp1=1>>.

<sup>165</sup> *Id.*

This is a process that brings exposure to “the other side;” exposure that is reciprocal: someone in the United States logging on to the above-quoted article, for example, sees a high-resolution color photograph of a Serbian man holding anti-U.S. propaganda in one arm and his child in the other, and, perhaps sees and understands the concern on the man’s face and the fact that he is a father, in addition to, (or hopefully instead of), “just an enemy”.

To be sure, this process of changing long-standing hatreds will not be an overnight phenomenon, as illustrated from the following account of President Clinton’s visit to post-war Kosovo:

“President Clinton received a hero’s welcome Tuesday from cheering, American-flag-waving Kosovar Albanians, who quickly lapsed into silence when he urged them to forgive their Serb neighbors and shape a new Kosovo.

‘You can never forget the injustice that was done to you,’ Clinton said. ‘No one can force you to forget what was done to you. But you must try.’

At each pause during the president’s remarks, a translation was read aloud. And when this line was completed, there was little sound to be heard, perhaps a few claps.

‘Children are not born hating those who are different from them, and no religion teaches them to do so,’ he continued, asking his audience to forget ‘hatred and past wrongs and getting even’ and to focus instead on good schools, new homes, new businesses and honest self-government.’ The translation again was met with silence.

A 30-ish mother of two, sitting in the bleachers at the complex was unequivocal about the prospect of one-day living peacefully with the Serbs. ‘I can never live with them,’ she said. Nearby, a mother of three was asked about her children’s future and their willingness to discard an older generation’s prejudices. ‘They afraid very much (of the Serbs),’ she said.’<sup>166</sup>

As the world becomes smaller, easing traditional, seemingly justifiable, hatreds will be one of the most important requirements of the new millennium. Communications media will

---

<sup>166</sup> James Warren, *Balkan Thanksgiving*, THE CHICAGO TRIBUNE, (published in THE SPOKESMAN-REVIEW, November 24, 1999, at A2).

continue to be an essential factor in bringing this about.

“For the superficial observer, the development of communications media—the network of land, sea and air ways, of postal, telegraphic and telephonic communications, of radio and television—may be a simple matter of economy or a sort of game. In reality, it is a potent phenomenon of nature,”<sup>167</sup> and: “It means in fact that mankind is uniting and welding itself into a single whole, under the influence of such developmental factors as the limitation of the earth’s surface, the population explosion, the intensification of spheres of influence and the greater opportunity for mutual compenetration.”<sup>168</sup>

### CONCLUSION

Genocide is an age-old practice of mankind. With increasing world-population and a concurrent struggle for resources and self-determination, an increase in genocide might seem inevitable. The dawn of the communications revolution has presented an alternative. Regarding this age-old problem then, Mankind is at a crossroads:

“Man now sees that the seeds of his ultimate dissolution are at the heart of his being....Is it not this presentiment of a blank wall ahead, underlying all other tensions and specific fears, which paradoxically (at the very moment when every barrier seems to be giving away before our power of understanding and mastering the world) is darkening and hardening the minds of our generation? As psychiatry teaches us, we shall gain nothing by shutting our eyes to this shadow of collective death that has appeared on our horizon. On the contrary, we must open them wider.”<sup>169</sup>

---

<sup>167</sup> PIET SMULDERS, *THE DESIGN OF TEILHARD DE CHARDIN* 95, The Newman Press, (Westminster, Maryland), 1967, (citing *Oeuvres*, III (1923), 87 f).

<sup>168</sup> *Id.* (citing *Oeuvres*, V (1945), 147; Eng. Trans., p. 114).

<sup>169</sup> *Id.* at 93 (citing *Oeuvres*, V (1952), 391; Eng. Trans., *The Future of Man*, p.300).

The world has seen a veritable communications-media explosion: the worldwide pervasiveness of television, beginning in the 1980s, the cutting edge approach of television news media, such as CNN, at the beginning of the 1990, and the Internet revolution in the mid-Nineties, have phenomenally increased the speed and effectiveness of worldwide communication. The power of the media, grounded, in fundamental principles of free speech, is upheld in most of the free world, limited only by compelling government interest. Concurrently, the pervasive influence of television, especially as a medium for cultural dissemination, is evident in some of the European attempts at legislation aimed at preserving European culture from outside... (i.e., American), culture. Moreover, a new-world political and economic order arisen since the fall of communism, combined with the communications-technology revolution, has spawned the phenomenon understood collectively as “globalization,” characterized by a growing interconnectedness of worldwide cultures, economies and information.

“Media pressure” has had a profound, revolutionary and historic effect on the barbaric and immemorial practice of genocide and other war crimes: “Early-warning,” via the media, of coalescing genocidal situations has headed off crisis before they began. At the same time, as a testimony to the power of the medium, government controlled media has been used to terrible effect in inciting the very practices so encouragingly mitigated by the effect of “free-media.”

Free media has proven capable of garnering international effort to reveal and halt war crimes in progress, as well as expose atrocities and genocide that otherwise would have remained hidden. The Media’s influence has extended to create pressure and incentive toward the trial and punishment of war-crime perpetrators; pressure great enough at times to jeopardize emerging international norms of justice and judicial procedure. Communications media are poised, behind the aegis of developing norms of international law, to operate at the forefront of this new world-

order of communicational interconnectedness, in the struggle against genocide and war crimes.

To the extent that the media and communications technology have increased worldwide knowledge and understanding, and to the extent that knowledge and understanding are the root of consciousness, communications media have deepened mankind's consciousness. It is this increase in consciousness, ultimately, that will curtail, if not stop, genocide and other war crimes. The success of this development stands as a moral imperative for mankind: to stop the slaughter. For Mankind, in the end, there is nothing more important.