

Beyond International Humanitarian Law

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Remarks of Madeleine Rees (edited transcript)

I want to talk about compartmentalization, convergence and international law. At which point most of you are thinking, Thank God, she's only got 10 minutes. But I think it's very important to refer back to what Rob was saying about this patchwork system that we have. I would refer to it more as a sort of jigsaw puzzle that we've been working on independently of each other. We've got people working on human rights in one corner, and we've got people working on IHL in another corner, and people working on everything to do with treaties, and controlling nuclear weapons, and other forms of disarmament in another corner. And we even meet in different buildings, and we have different fora in which we try our advocacy to convince states to do various things.

And very rarely do we put them all together. I usually hang out in the Human Rights Council, because I am a human rights lawyer. I don't see many people coming from the Conference on Disarmament to listen to what is being said in human rights terms. And what we're missing are those pieces which are going to bring that together, so we actually have a picture which represents what we are all in need of, which is a regulatory framework that recognizes the interconnectedness of those different regimes. I'm going to come onto that.

As I said, I'm a human rights lawyer. I chose human rights law partly because it actually makes sense. I think it's one of those things that everybody can actually understand and rationalize. You know there's been lots of arguments about cultural relativism and traditional values fairly recently. You don't have to be a human rights lawyer to understand that when we're talking about socio-economic rights we're talking about basic, basic needs. We're talking about rights to health, to education, to employment, to social welfare. We're talking about non-discrimination and the application of those rights. And we're talking about progressive realization of those rights. We all know that not every country in the world can provide basic systems of health and welfare and employment etc. But what we do know is that they have an obligation to increase that capacity over time in accordance with their resources and the law actually talks about using the maximum use of available resources, and this applies at all times, so even in conflict, you have to keep providing these rights. It's understood that you will not be able to provide it to the best levels possible. But you have an obligation to keep on and when it

comes to civil and political rights we all expect to have our right to life guaranteed by law. We all expect to have due processes of law so that there is protection for yourself, for your families, for your rights embodied in other parts of legislation which affords you things like fair trial and a fair and due process and so on and so forth.

We expect the right to participate; we expect the right to actually determine what our state will do. Of course, that is a fundamental principle of human rights because in the end it is the state which has the responsibility to guarantee those rights, not just for its citizens but for all people in their country. They have the obligation to respect, protect and fulfill. How you do it? That's a matter for you the state, but you have to make sure it happens.

The reason why I like this even more is because it's an evolutionary approach. While the basic needs are there, they have been interpreted over time in a teleological approach. As society progresses, as public opinion progresses, as knowledge expands, we understand better as to how we are supposed to be providing for these basic rights that individuals have. So it's the systems we want then, the systems of regulation, back to the state.

So I'm a fan. I'm a committed human rights lawyer and advocate. Does it work? Well, not really. It works to a certain extent and I'm still a passionate fan of international human rights law, despite that fact that I've spent the past 20 years working in and on war zones and in post-conflict zones. So can see exactly what happens to human rights once you have decided that you are going to unleash the dogs of war into rational human thought. Once you've done that, then human rights will certainly be violated.

This is where we go into our other area of law, international humanitarian law, and with the best and greatest of respect to all the IHL lawyers in the room, I am deeply suspicious of it. And I'm deeply suspicious of it because it still attempts to regulate the unregulateable, if there is such a word, and that is, these are laws of war. So in some respects it's great that we've got IHL rules, of course it's great that we've got them. But IHL is still not saying that war in and of itself is something that civilized human beings should not be using as a recourse to deal with conflict. In fact, I'm sure the Darwinist would be really worried about our evolutionary process if it's going to be the most powerful that is going to win, by using physical or other means of force. It's certainly not going to implement "the meek shall inherit the earth" idea.

My other concerns about IHL are numerous. One is the uncertainty of it all. You're in the middle of a battlefield and who do you get to kill? You know you're not allowed to kill civilians, but you're allowed to kill that little conscript who is 17 years old, who didn't want to fight in any

case, but had to, because otherwise he would have been imprisoned, and he was too scared to do that so he had to do it. But him alright, you can shoot him. And if you shoot and you wound him then you don't get a second go at shooting him, he's wounded and you have to look after him, and it becomes very confusing in the middle of the battlefield.

In the most recent case from the ICTY appeals tribunal, the Gotovina case, addressed where and how close to a target you had to be before you are actually deemed to have violated IHL and committed a crime against humanity, in this case by the shelling of civilians. Well he missed the military target was aiming at by 200 meters and shelled civilians. The trial court said that's outside the margin of error and he was found guilty. But then the appeals court said actually 400 meters is the leeway that makes it alright for this particular type of weapon. So while that you missed your intended target you haven't committed a violation of IHL, what about all these women and children that were killed as a result of that? Nothing at all now, just accidental collateral damage.

So yes, there are problems with IHL. I think that one of the most obvious ones is no matter how brilliant and articulate the advocacy for the application of IHL is to the issue of the moment, that of the use of nuclear weapons, they are not listening. I find it absolutely incredible that when we start talking - and I used to go to Greenham you know, I'm a feminist, you always go to Greenham - but did I listen to all the arguments in great detail? The horrible things that happen if you have these weapons? Then I started working with WILPF, and every time I have a conversation on nuclear weapons and the application of law, I fear I have entered into a parallel universe, where the laws of physics have destroyed the laws of humanity. Because everything that is said is so obvious and so true, but still we haven't been able to make the shift to actually say that states and their leaders must be held accountable for the evil things that their weapons will do.

The ICJ decision on nuclear weapons I found confusing. Mainly because it didn't do enough on human rights, but it does talk about IHL. We know that blinding weapons, carpet bombing, creating fire storms, using chemicals and toxic weapons, all that sort of thing is criminal. You send your army in and start doing that and then there is no question that the International Criminal Court jurisdiction will kick in as you have committed crimes against humanity, war crimes, grave breaches of the Geneva Conventions. There will be universal jurisdiction and you will be indicted. That's if you send in your army. You sit back, you make a decision, punch your little code in and you launch a nuclear weapon, no, it doesn't apply. Now

that to me is the epitome of parallel universe where law seemingly doesn't have a role to play, and of course it must. And it is absolutely fundamentally important.

If human rights and IHL are to regulate systems and to create systems of control so that we as people within our states have legitimate expectations of particular protections being afforded, then we have to apply it across the spectrum. We can't have our bit of the jigsaw puzzle working but there another bit down there that is going to destroy everything we're putting together. And so we have a convergence under international law, between IHL and human rights. We've seen it already started when we started drafting the ICC, which is informed by human rights principles. It's recognized to a greater extent in the Security Council than it has been before when they are starting to link the whole women, peace and security agenda and recognizing that the use of sexualized violence in conflict is an international security concern. The General Assembly two weeks ago, on the 30th of April, made the connection between the application of universal human rights and violations of individuals in armed conflict in a sexualized manner. Excellent, we're doing the joined up thinking, states are beginning to do the joined up thinking, and they're allocating funding to it. So why is it there is this gap in the conversation when it comes to the bigger killer by far in potential?

I mention in the beginning that there is this issue of the maximum use of available resources and progressive realization of rights. How do we use and apply human rights in that terms? This is not the sexy part about human rights law in some respects, because you want to get the bad guys, you want to stop them doing this. But one of the things that human rights law can do is erode the possibility of continuing to produce nuclear weapons. And as you may have gathered from my accent, I'm from the United Kingdom, and my lot are happily carrying on producing Trident after Trident after Trident, with the idea of it being an independent nuclear deterrent. They are also bankrupt.

So with the austerity cuts, there were cuts of \$7 billion to be made to social welfare and other areas which had been provided by the state. \$7 billion. Now 70% of that fell disproportionately on women. At the same time \$5 billion was being spent on Trident, just as a regular budgetary allocation. Which meant that the women of the United Kingdom indirectly paid for Trident. Did anyone ask them? No. Is that progressive realization of rights? Absolutely not. It is actually a reversal and in fact in the UK because of the cuts that have happened and its disproportionate effect on women there are now women who cannot access domestic violence shelters. They have to stay with violent husbands. Two per week are dying as a direct result of

having nowhere to go, and nowhere to leave to. The rape crisis centers, I used to volunteer there, are closing as well because of cuts that have taken place. Completely in contravention of what human rights laws has to say about progressive realization and non-reversal of the gains that are made.

We must raise these issues whenever there is a periodic universal review. How much are your nuclear weapons costing you whilst the right to life, the right to food, the right to health, the right to education, the right to employment are being violated in your country? And what must the international community do about it, because as international human rights law says, the international community shall provide assistance where the state is unable to reach such fulfillment? I know that behind closed doors several states did raise that. When they were asked to help in a particular humanitarian disaster, they asked, how much are your nuclear weapons costing you whilst you're asking us to provide this amount of funding?

So there are issues that can be raised from human rights perspectives which I think are extraordinarily important. We have to keep raising them in all fora, including in human rights treaty bodies where there are reporting requirements. WILPF has had some good successes fairly recently when we have got the CEDAW committee to talk about the purchase and use of arms in relation to gender based violence, and in the Arms Trade Treaty negotiations in which criteria for refusing transfers include human rights, IHL, and gender-based violence.

To conclude, I want to go back to the idea of our idea of this jigsaw puzzle. I think that we need come at the problem of nuclear weapons from different sides, from environmental lawyers, humanitarian lawyers, human rights lawyers, to actually ensure that we have regulatory frameworks that work. Most importantly, leaders of the countries that have these weapons have to understand what leadership actually means. Leadership should be about ensuring that there can be no genocide, because you do not have the weapons which will enable you to commit it. Thank you.