1985

The Protection of "Collective Victims" in International Law

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I. Basis for the Study

The “Discussion Guide for the Regional and Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders” defines in very broad and general terms the parameters of “victims of crime.” These can be said to include victims of national crime and those of international crime. Another distinction is what is commonly understood to be individual victims of common criminality, and collective victims of national and international criminality. The “Discussion Guide” does not, however, make these distinctions in such terms (i.e., victims of national crime, victims of international crime, individual victims of common criminality and collective victims), but implicitly recognizes
these distinctions by the references and examples it makes. Furthermore, the "Discussion Guide," though not specifically mentioning the distinction between individual and collective victims of crime, recognizes it by referring to the different types of victimization and sources of law protecting victims. These distinctions are, however, made somewhat clearer in the "Report of the Committee on Crime Prevention and Control on its eighth session and provisional agenda and documentation for the ninth session of the Committee." Further discussion of "collective victims" appears in the following documents dealing with the topic of "Protection of Victims." They are:

1. Guidelines for Measures on Behalf of Victims of Crime and Abuses of Power;
2. Study of Patterns, Trends, Dynamics and Impact of Criminal Acts Linked to Abuses of Power, and the Typology of Offenders and Victims;
3. Analysis of Legislative Provisions and Measures Designed to Deal with Economic and Political Power.

The concern for collective victims was also expressed in the "Statement submitted by the International Association of Penal Law, the International Society for Criminology, the International Society of Social Defense, non-governmental organizations in consultative status, category II and the International Penal and Penitentiary Foundation to the Economic and Social Council," which stated:

The four organizations wholeheartedly approve the intention to lay emphasis at the Seventh United Nations

4. Id.
Congress on the Prevention of Crime and the Treatment of Offenders on *Collective Victimization*. . . . 10

It further stated:

It would seem important that the concept of “victim” be deepened and broadened: The victim may be a group of persons, and not just one individual. 11

The above-referenced documents establish the basis for the study of this question as part of the General Assembly mandated topic of “Victims of Crime,” which is within the scope, meaning, application and protections established by the U.N. Charter, 12 The Universal Declaration of Human Rights, 13 the International Covenant on Civil and Political Rights, 14 the International Covenant on Social, Economic and Cultural Rights, 15 and the many conventions, some of which are referred to hereinafter in this report, and the numerous Security Council, General Assembly, and Economic and Social Council resolutions referring to these tests.

It is paramount for the effective study of “collective victims” that the subject be dealt with on an objective scientific basis and from the perspective of the victims’ protection. Care should be taken not to politicize the concern with these questions, which appropriately remains a human and humanitarian concern whose object is within the scope of crime prevention and criminal justice.

10. Id. at 4. (emphasis added).
11. Id. (emphasis added).
The fact that conduct leading to collective victimization may have, in whole or in part, its origins in political questions should not be a deterrent to the study of victimization impact and the protection of victims. It would be tragic if concern for "collective victims" should be overlooked because of political sensitivities or apprehensions that the study of the question could be politicized.

The fact that there exist international instruments and other U.N. and non-U.N. bodies concerned with "collective victims" should not be reason enough to preclude the study of this phenomenon which is within the scope of the mandate for the Seventh Congress, namely the topic "The Victims of Crime."16

II. Distinction Between Individual and Collective Victims

Scientists and policy-makers have traditionally focused their attention on individual victims of national common crimes. The literature of criminology, victimology, penal law and the social and behavioral sciences is replete with studies, research, analyses and speculations on that type of victim.17 The definition of individual victims of national common crimes in any given society also includes categories of group victims (i.e., the elderly, the poor, the affluent, the young). The victimization of such individuals is not, however, prompted by their belonging to a given category, or directed at them because of a group affiliation. What is intended by "collective victims" is that category in which the individual victims are targeted because they belong to a certain group or collectivity. The criminal conduct, goals, and outcomes are in this case predicated on the fact that the victim belongs to an identifiable group or collectivity.

It is self-evident that every human being is part of a group, if nothing else, the group of humans. What is therefore sought to be identified in this inquiry are groups or groupings of individuals linked by special bonds, considerations, factors or circumstances which, by these very reasons, make them the target or object of victimization. Among the cognizable groups or group-

17. See, e.g., Victimology, which has exclusively dealt with that topic since first published in 1976; Journal of Criminal Law & Criminology, published by Northwest University School of Law; and American Criminal Law Review, published by the American Bar Association, Section on Criminal Justice.
ings under international law are collective victims of: war, whether of an international or non-international character, and whether combatants or civilians;\textsuperscript{18} genocide;\textsuperscript{19} crimes against humanity;\textsuperscript{20} apartheid;\textsuperscript{21} slavery and slave-related practices;\textsuperscript{22} torture;\textsuperscript{23} unlawful human experimentation;\textsuperscript{24} piracy;\textsuperscript{25} aircraft hijacking;\textsuperscript{26} kidnapping of diplomats and other internationally protected persons;\textsuperscript{27} civilian hostages;\textsuperscript{28} unlawful use of the mails;\textsuperscript{29} and, illicit trade and distribution of narcotic drugs.\textsuperscript{30} It

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20. See supra note 19.


27. See, e.g., note 26 supra.

28. See, e.g., note 26 supra.


is also the case with respect to individuals who, as a group or collectivity, are the subject of internationally protected human rights with respect to their right to life, liberty, freedom from arbitrary arrest and detention, freedom from subjection to cruel, inhuman and degrading treatment and punishment, and freedom from discrimination be it racial, ethnic, religious, social, political or otherwise. These protections and their distinguishing characteristics are outlined below.

III. The Impact of Collective Victimization

The world community has long focused attention on the rights of victims of national common crime which is by its very nature a form of criminality committed by and against individuals even when it takes the form of organized crime, organized criminality, and even when directed against individuals who are part of a given group. However, the interest and concern for victims of this type of criminality has overshadowed the appropriate and necessary concern with “collective victims,” either of international crime or resulting from domestic policies and practices of states which are in violation of international and national law.

Since World War II, three non-international conflicts have produced an estimated total of five million “collective victims” (one million Biafrans, one million Bengalis/Bangladeshis, three million Cambodians/Kampoucheans). These victims belonged to an identifiable group whose victimization, irrespective of the merits of the case and against the causes of the conflicts which gave rise to it, was based on their belonging to a given group. That alone would be enough, on the basis of the quantum of the resulting harm, to focus more attention and concern on “collective victims.”

In recent times, inter-group conflicts such as those in Ire-

land, Cyprus and Lebanon have generated significant collective victimization. The practice of apartheid in Southern Africa is another glaring illustration of collective victimization.33

An area involving a lesser degree of ideological or political dimension is the continuing problem of refugees and their victimization as a group,44 either by means of their refoulement,55 or by their interception and diversion on the high seas by governments seeking to avoid their presence within the national territory, or by their treatment by host-governments in refugee camps. These actions lack basic humanitarian standards ostensibly protected by international law. Refugees are also collectively victimized by individuals and groups whether they be victims of “pirates” as in the international waters between Vietnam and Thailand,36 or simply the subject of economic exploitation.37

The practices of forced labor, slave-related practices, child labor and similar practices, violations of the letter and spirit of relevant international conventions establishing clear norms and standards, still exist in certain countries.56 Such practices, and


35. The Convention Relating to the Status of Refugees prohibits Refoulement, requiring that “No member State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Convention Relating to the Status of Refugees, Art. 33, para. 1, signed at Geneva, July 28, 1951, 189 U.N.T.S. 137.


to a lesser extent certain egregious forms of economic exploitation, apply also to refugees.  

Finally, arbitrary arrest and detention, torture, cruel, unusual and degrading treatment and punishment, and persecution on the basis of race, ethnicity, religion, political belief, or social group exist in differing degrees in a number of countries in direct contravention of existing international norms and standards embodied in a number of international conventions.

The quantum of harm resulting from all these violations is yet to be measured and its human significance is yet to be appropriately appraised. Nevertheless, it is by general knowledge far greater in its quantity and impact than domestic criminal victimization deriving from common criminality.

IV. Sources of International Law Applicable to Collective Victims

International law, as well as national legislation in many countries, protects a number of categories of persons or groups. Some of these protections are in the form of multilateral conventions which explicitly or implicitly deem such violations as international crimes. The other form is reflected in certain international instruments concerned with human rights protections. The distinction between international criminal law proscriptions and international human rights protections is significant, as to the respective legally binding effects of these two forms of protection, and should therefore be underscored.

40. Bassiouni, supra note 23.
42. See HUMAN RIGHTS—A COMPILATION OF INTERNATIONAL INSTRUMENTS (U.N. Pub. 1978) and UNITED NATIONS ACTION supra note 31.
International criminal law instruments are invariably embodied in multilateral conventions binding upon the contracting parties. These conventions define the proscribed conduct and place a duty on the contracting states to prevent, punish, prosecute or extradite offenders, and usually require states to pass appropriate legislation to enforce the provisions of the convention and to cooperate with other states in the prevention and suppression of these violations.

International human rights instruments may be in the nature of legally binding instruments when they are conventions. They are also in the nature of General Assembly resolutions and resolutions by other U.N. agencies and bodies which are not therefore legally binding as such. They may, however, be binding on the member states of the U.N. as part of other sources of international law. These legal distinctions are not only relevant with respect to the legally binding effect of the obligations, but also with respect to the modalities of enforcement or implementation of the norms and standards in question.

International criminal law protects categories of victims, be they individuals or part of a group, irrespective of whether the harmful conduct constitutes state-committed or state-sponsored activity, or conduct engaged in by individuals without any connection to the state or its authoritative processes. The protections fall under the following categories of international crimes:

1. Aggression
2. War Crimes

3. Unlawful Use of Weapons
4. Crimes Against Humanity
5. Genocide
6. Apartheid
7. Slavery and Related Crimes
8. Torture
9. Unlawful Medical Experimentation
10. Piracy
11. Crimes Relating to International Air Communications


49. Supra note 48.
55. Supra note 24.
57. Convention of Offences and Certain Other Acts Committed On Board Aircraft
12. Threat and Use of Force Against Internationally Protected Persons

13. Taking of Civilian Hostages

14. Drug Offenses

15. International Traffic in Obsolete Publications

16. Destruction and/or Theft of National Treasures

17. Environmental Protection

18. Theft of Nuclear Materials

19. Unlawful Use of the Mails


65. See, e.g., Universal Postal Union, signed at Rio de Janeiro, October 26, 1979, T.I.A.S. No. 9972; Draft Code, supra note 29.
The above enumeration of the twenty-two recognized international crimes suggests that the intended protected subjects of most of these crimes are individuals who are part of an identifiable group, irrespective of the perpetrators.

Clearly, the degree of collectivization in each of the above categories will differ as will the reasons for victimization. For example, the collectivity aimed at in apartheid is more readily identifiable than that of drug offenses. Similarly, the distinctions between state-sponsored activities resulting in collective victimization and nonstate-sponsored activities, though producing the same outcome, must be dealt with separately for a variety of reasons and purposes. However, from the perspective of protecting victims, they have certain affinities at least insofar as the outcome of these activities result in collective victimization.

International human rights instruments protect persons irrespective of whether their rights are violated on an individual or collective basis. These protections cover a number of areas, but those which are the object of this study are limited to protections relative to life, liberty, physical integrity and the essential well-being of the person. International human rights instruments usually provide for protections described in general or generic terms and are seldom specific enough to make them enforceable in the same manner as specific penal proscriptions. They are also frequently subject to certain explicit or implicit qualifications or limitations either by their nature, the manner in which they are stated or their generality. These instruments also frequently relate to a number of areas of civil, political, economic, social and cultural rights and do not make distinctions

between essential and fundamental, or basic, rights and other rights. These basic rights include:

1. the right to life;
2. the right to be free from arbitrary arrest and detention;
3. the right to be free from cruel, inhuman or degrading treatment or punishment;
4. the right to be free from discrimination, be it racial, religious or otherwise.

Conventions relevant to the above protections include specific guarantees and prohibitions against certain types of conduct. Though most of these instruments do not contain provisions for their enforcement, they may have some modalities of implementation. There are conventions on the subject of the protection of civil and political rights, the protection of refugees, and the elimination of racial discrimination.

Other international instruments, not embodied in conventional international law, but which are now part of customary international law and general principles of international law, apply collectively to the right of self-determination, the exercise of civil and political rights, and the protection of social, economic and cultural rights. While these protections are essentially of a socio-political or economic nature, their abridgment may result in the violation of a basic right affecting life, liberty, freedom from arbitrary arrest and detention, cruel, inhuman or degrading treatment or punishment, and discrimination.

Collective victims protected under international criminal law and international human rights instruments, fall into the following categories of persons:

1. Victims of international and non-international conflicts:
   a. combatants
   b. civilians
2. Victims of genocide

70. Supra notes 12-15.
73. Supra note 34.
3. Victims of apartheid
4. Victims of “Crimes Against Humanity”\textsuperscript{76}
5. Persons subjected to slavery or slave-related practices:
   a. slavery
   b. white slavery
   c. traffic in women and children
   d. forced labor
   e. abuse of women and child labor
6. Refugees denied certain protections
7. Kidnapped diplomats and other internationally protected persons
8. Civilians taken as hostages
9. Persons subject to acts of piracy
10. Persons subjected to the risk of unlawful use of the mail
11. Persons subjected to torture
12. Persons subjected to unlawful human experimentation
13. Persons subjected to forms of cruel, inhuman and degrading treatment and punishment (other than torture and unlawful human experimentation)
14. Persons subjected to arbitrary arrest and detention
15. Persons whose life, liberty, safety and well-being is individually threatened by state policies on the basis of their belonging to a racial, ethnic, religious, social, political, economic or cultural group
16. Persons subjected to the abuse of power of states, their agencies and public officials without the opportunity of redress of wrongs
17. Collectivities denied their right of self-determination by coercive state policies and practices.

V. Modalities of Enforcement of International Criminal Law Proscriptions and International Human Rights Protections

These two sources of legal norms and standards have distinguishing characteristics some of which were described above. The most important of these distinctions is the difference in approaches and modalities of enforcement and implementation.\textsuperscript{76}

\textsuperscript{75} Supra note 50.
\textsuperscript{76} See Bassiouni, supra note 43 and Mueller & Besharov, The Existence of Interna-
In addition to the general distinctions as to the approaches and modalities of enforcement and implementation of international criminal law and international protection of human rights, there are also distinctions with respect to the different subject-matter areas. In fact, every international instrument dealing with a particular subject matter, whether it be one of international criminal law or one of international protection of human rights, seems to have developed separate modality or modalities of enforcement or implementation.77

Within the area of international criminal law, a general distinction can be made between the ideal "direct enforcement scheme,"78 which anticipates the establishment of an international criminal court that does not presently exist, and the "indirect enforcement scheme" whereby contracting states obligate themselves to one or more specific efforts to prevent, punish, criminalize, extradite, provide judicial assistance, deny the defense of "obedience to superior orders" and in general to do whatever is necessary through their domestic legal system to enforce the international obligation.79 While these two schemes, "direct" and "indirect," exist in the sphere of international criminal law, they do not appear in instruments dealing with the international protection of human rights. Note, however, that there is an overlap with respect to certain international criminal law conventions whose object is essentially the protection of certain human rights, (such as proscriptions against genocide, apartheid and slavery).

Human rights instruments are mostly declarative of rights and only some provide for certain modalities of implementation. Among these, for example, is the Optional Protocol to the International Covenant on Civil and Political Rights which establishes a Human Rights Committee charged with investigating reports of violations of the Covenant.80 The Covenant itself
provides for periodic reporting and reviewing of the implementation policies and practices of contracting states.  

A number of other modalities of enforcement have also developed through appropriate United Nations bodies and agencies such as the International Law Organization, the Center for Narcotic Drugs, the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and the Ad-Hoc Working Group on Southern Africa. These modalities include reporting, dissemination of information, receipt of complaints or reports, inquiries and investigations. Other specialized agencies such as the United Nations Office of the High Commissioner for Refugees provide for modalities of humanitarian assistance. In addition, the U.N. Secretariat provides for many services which are in the nature of implementing U.N. conventions and resolutions of the appropriate bodies of the U.N. within the different areas of their competence.  

The enforcement and implementation system described above is, however, fragmented and frequently ad hoc. It deals with enforcement and implementation as to different subject matter which may be the object of one or more international instruments (for example, the protection of refugees and slavery and slave-related practices).  

A number of “gaps” exist in certain areas of protection due to the absence of coordinated and integrated modalities of implementation. These result in a lack of protections for the in-
tended subjects of international instruments. For example, the 1951 Refugee Convention\textsuperscript{83} and the 1967 Protocol Amending the 1951 Refugee Convention\textsuperscript{84} provide against refoulement and include other measures for protection of refugees.\textsuperscript{85} However, experience indicates that refugees are still victimized as a group in violation of, if not the letter, then certainly the spirit of these provisions. This inadequacy of protection is also apparent with respect to the protection of civilians in times of conflict of a non-international character, particularly in civil strife and "wars of national liberation" where the humanitarian protection of the Hague Rules on customary laws of war\textsuperscript{86} and the Geneva Conventions on the regulations of armed conflicts of August 12, 1949\textsuperscript{87} and their Additional Protocols of 1977\textsuperscript{88} have not been able to provide the necessary humanitarian protection to civilian populations or to a particular collectivity or group which is victimized intentionally or unintentionally by one or more of the protagonists in the conflict.

Experience also reveals that the prohibitions against genocide\textsuperscript{89} and apartheid\textsuperscript{90} are similarly plagued by difficulties of enforcement, since genocide requires the specific intent to destroy the protected group as such, and apartheid refers essentially to the practices of one state: South Africa.

\textsuperscript{83} Convention Relating to the Status of Refugees, \textit{supra} note 34.

\textsuperscript{84} \textit{Id}.


\textsuperscript{86} Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 3 Martens Nouveau Recueil (3d) 461.


\textsuperscript{89} Bassiouni \& Nanda, \textit{TREATISE}, \textit{supra} note 19.

\textsuperscript{90} O.A. OZGUR, \textit{supra} note 33; and Bassiouni \& Derby, \textit{supra} note 21.
Furthermore, another "gap" exists with respect to the protection of groups of victims in violation of specific norms and standards of the international protection of human rights because the source of the harmful conduct is "beyond the reach" of the law. This was one of the topics of the Sixth U.N. Congress on The Prevention of Crime and the Treatment of Offenders\(^9\) which, although raising the question with concern, has yet to provide specific solutions to the problem.

The resulting harm to these collectivities or groups protected by international instruments, irrespective of the modalities of enforcement established in these instruments, is nevertheless obvious and in many cases egregious. The harmful outcome can neither be denied nor minimized, and comparatively, it is quantitatively much greater than the cumulative effect of all forms of domestic victimization arising out of common criminality. Fear and apprehension of the political ramification of these questions should not overshadow the need to deal with them in an objective scientific manner with appropriate human concern for this large category of otherwise overlooked victims.

**VI. Conclusion and Recommendations**

The above observations illustrate four conclusions. First, there exist categories of collective victims which although in part protected by international and national law are nonetheless victimized. Second, the means to adequately prevent this type of victimization are limited or nonexistent. Third, there are no modalities for the adequate protection or compensation of such victims. Fourth, concerns about the politicization of these questions are preventing the appropriate objective scientific study of the problems of "collective victims" and the development of appropriate and adequate means needed for their protection.

On the basis of the above findings and conclusions the following recommendations are submitted:

**A. The U.N. should concern itself with the objective scientific studies of the subject of "collective victims" under international and national law in a manner that avoids the politiciza-**

tion of these questions. Such studies must include:

1. the identification of collective victimization as an existing phenomenon;
2. the appraisal of its significance;
3. the evaluation of existing international and national norms and standards protecting "collective victims";
4. the appraisal of existing modalities of enforcement and implementation of international norms and standards under international and national law;
5. the development of new modalities of enforcement and implementation of existing international norms and standards under international and national law.

B. The U.N. should find the appropriate means and methods to integrate its various activities and efforts with respect to the protection of "collective victims," including but not limited to the development of new mechanisms for inter-agency cooperation.

C. The U.N. should establish an ad hoc committee of experts from appropriate U.N. personnel and outside experts to study the problems stated above and make appropriate recommendations including those relating to existing "gaps" in the protective scheme of existing international instruments in order to insure the intended results of these instruments.

D. The U.N. should expand its cooperation with appropriate non-U.N. agencies and bodies concerned with the protection of "collective victims," and those bodies engaged in this type of activity, including inter-governmental and non-governmental bodies and organizations.