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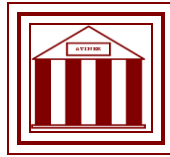
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The Prohibition of Persecution: A Regime-based Analytical Framework

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The Prohibition of Persecution:
A Regime-based Analytical Framework

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Abstract

Despite being prohibited and criminalized under international law for nearly 70 years, persecution has still been practised by several states. Groups in these countries were subjected to intentional, systematic and widespread discrimination on an identity-related ground like race, ethnicity, culture and religion. In many cases persecution was at the heart of the power structure of the state. The purpose of this paper is to propose a framework for the analysis of persecution. Although drawing on international human rights law and international criminal law, the framework is not designed for a strictly legal inquiry but for one highlighting the political dynamics of persecution. The main aspects being probed are the identities of the agents and victims of persecution, the nature of the discrimination, the responses of the international community, and the persecuting states' reactions to external censure. The core of the framework is based on regime analysis, particularly the functioning international human rights regime. This allows for the identification of the international normative framework, the formal rules and the multilateral institutions involved in protecting universal human rights and punishing offenders. To cover the various political features surrounding the legal prohibition of persecution, the suggested analytical framework has additional components from outside regime analysis. Finally, a selection of case studies of contemporary state persecution is proposed.

Thanks to the Nuremberg trials immediately after World War II, the age-old practice of persecution - defined in modern parlance as intentional, systematic and widespread discrimination against people on an identity-related ground - became a punishable crime against humanity. Despite being prohibited and criminalized under modern international law, scores of states have continued to persecute their own populations on the grounds of race, ethnicity, culture, religion, gender and political orientation. Apartheid in South Africa, a system of racial persecution branded as a crime against humanity by the United Nations, was one of the most notorious among several cases of state persecution in recent decades.

The purpose of this paper is to propose a framework for the analysis of the politics surrounding the legal proscription of persecution. Although drawing on international human rights law and international criminal law, the framework is not designed for a strictly legal inquiry but for one focusing on the political dynamics of persecution. The pertinent aspects are the identities of the persecutors and persecuted, the nature of persecution, the responses of the international community, and the reactions of agents of persecution to external censure. The core of the analytical framework is derived from regime analysis, particularly the operational international human rights regime, which allows for the identification of the international normative framework, the formal rules and the inter-governmental organizations (IGOs) involved in protecting universal human rights and punishing offenders. The framework will however go beyond regime components to accommodate other elements of the politics involved in the prohibition of persecution.

Although in practice typically accompanied by other crimes against humanity like torture and enforced disappearances, persecution is singled out for this inquiry because it is central to many states' domestic political orders and typically creates an enabling environment for these other criminal acts.

The notion of an international regime

Making its debut in International Relations scholarship in the 1970s (Hasenclever *et al*, 1997: 1), regime analysis has been guided by Krasner's (1983: 1-2) seminal definition of an international regime as 'principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area'. By principles Krasner understood 'beliefs of fact, causation, and rectitude'; norms consist of standards of conduct defining the rights and obligations of actors; rules convert norms into 'specific prescriptions or proscriptions for action'; and decision-making procedures involve practices for making and implementing collective choices.

What critics called 'a disconcerting degree of vagueness' regarding the exact meaning and mutual relationship of the four elements of an international regime (Hasenclever *et al*, 1997: 11), has prompted some scholars to opt for leaner definitions that combine some of Krasner's components (Donnelly, 1986: 602; Hasenclever *et al*, 1997: 12; Young, 1999: 5; Clark, 2001: 23).

Following the latter approach, it is proposed here that an international regime comprises principled norms, rules and institutions.

Principled norms can be regarded as expected or proper standards of conduct based on fundamental propositions or beliefs. As guides to behaviour, principled norms are typically expressed in terms of rights and responsibilities, which are of a moral (rather than functional) character in the case of human rights (Clark, 2001: 23-30; Goertz & Diehl, 1992: 634-9; Klotz, 1995: 14; Levy *et al*, 1995: 271-273; Legro, 1997: 33).

Rules, in turn, represent 'precise delineations of correct behaviour in specific circumstances' (Armstrong *et al*, 2007: 20). Here the focus will be on explicit and formal rules, i.e. those actually 'written down somewhere' and which can be stated publicly, as opposed to implicit rules not written down (Brown & Ainley, 2005: 130). In this regard one can distinguish between national rules (the domestic laws of states) and international rules (international law, the charters of IGOs and their resolutions and regulations) (Russett *et al*, 2010: 378). Some international rules are enshrined in legally binding treaties or conventions, whereas others are based on soft law agreements like ministerial declarations and executive accords (Young, 1999: 6). A further useful distinction is between proscriptions, permissions and prescriptions typically contained in the rules of international regimes (Cook, 2000: 44-45).

Institutions, finally, encompass both the structures (which could be new or existing IGOs) and procedures that enable the parties to a regime to exercise collective choice as well as monitor compliance, enforce regime rules, punish defection, resolve disputes, and review and revise regime provisions (Young, 1999: 6; Hasenclever *et al*, 1997: 11; Levy *et al,* 1995: 278; Burchill *et al*, 2005: 65; Keohane, 1989: 5).

The international human rights regime

Although it was only in the 1980s that scholars began applying the notion of an international regime to the field of human rights (Ruggie, 1983: 93-110; Onuf & Peterson, 1984: 328-343; Donnelly, 1986: 606-607), the international human rights regime had by the mid-1970s already taken effect. This means that the components of the regime, centred on the UN, were then formally in place and functioning. The critical mass was provided by the International Bill of Rights: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both 1966). These twin covenants came into force in 1976 when the requisite number of state ratifications had been reached (Forsythe, 1985: 40-41). By then the UN had adopted several other international human rights instruments too.

The three components – principled norms, rules, and institutions – of the international human rights regime can now be set out. In each category aspects specifically relevant to the prohibition of persecution will be added, rather than presenting the proscription of persecution as constituting a separate so-called

global prohibition regime (Nadelmann, 1990: 481-526). The absence of an international convention on persecution – and indeed on crimes against humanity as a whole – is a key reason for not treating the proscription and criminalization of persecution as evidence of a self-standing international regime; persecution is at best a subordinate regime (within the international human rights regime) dedicated to enforcing the ban on persecution.

Principled norms
The first four items can be regarded as general principled norms underpinning the international human rights regime, while the remainder apply to persecution in the context of crimes against humanity.
Derived from the Universal Declaration of Human Rights of 1948, recognition 'of the inherent dignity and of the equal and inalienable rights of all members of the human family' is the first principled norm. The declaration described such recognition as 'the foundation of freedom, justice and peace in the world'.
The second, affirmed in numerous other UN declarations, statements and resolutions, including the 2005 UN World Summit Outcome Document, concerns 'the universality, indivisibility, interdependence and interrelatedness of all human rights'.
Third, states have a 'solemn commitment' – quoting from the 1993 Vienna Declaration (adopted by consensus at the UN World Conference on Human Rights) – 'to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all' in accordance with the UN Charter and other international instruments dealing with human rights.
The more controversial fourth norm, still emerging rather than settled, is that of a 'responsibility to protect'. Endorsed by the UN's 2005 World Summit and affirmed in General Assembly resolution 60/1 of 24 October 2005, the principle holds that '[e]ach individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'. At the same time 'the international community, through the United Nations, also has the responsibility…to help to protect populations' from such mass atrocities.
Narrowing the focus now to crimes against humanity, the fifth principled norm proclaims that such crimes violate 'the sanctity of human personality' (Lauterpacht, 1950: 35) to such an extent that they transgress universally binding (*jus cogens*) norms and should be outlawed in all societies (May, 2005: 24). Where national laws authorize or allow acts constituting crimes against humanity, the prohibitions of international law should prevail (Murphy, 1997: 364; Lauterpacht, 1975: 517).
Individual criminal liability, in the sixth place, is firmly established in international law (Ratner *et al*, 2009: 16). Any person committing a crime under international law 'is responsible therefor and liable to punishment'; if domestic law does not penalize such an act, it does not relieve the perpetrator from 'responsibility under international law', regardless of whether that person acted as head of state or as a responsible government official (International Law Commission, 1950).
Seventh, universal jurisdiction (or simply universality) stipulates that every state has jurisdiction to prosecute and punish the crime of genocide, war crimes, crimes against peace (aggression) and crimes against humanity, irrespective of where they took place. The basis of the universality principle is that the crimes involved are highly offensive to the world community as a whole. If a state is unable or unwilling to prosecute individuals implicated, it

should extradite the accused to a state or international tribunal willing to undertake the prosecution (Barker, 2000: 50; Armstrong *et al*, 2007: 210-11; Robertson, 2006: 273-280; Shaw, 2008: 668-674).

Complementarity, the final principled norm, is linked to the seventh and specifically applicable to the International Criminal Court (ICC). The Rome Statute of the ICC gives primacy to national courts for the prosecution and punishment of international crimes. The ICC will only exercise jurisdiction if the states involved are unable or unwilling to do so. Earlier international tribunals (Nuremberg, Tokyo, Yugoslavia and Rwanda) by contrast enjoyed primacy of jurisdiction under their founding instruments (Armstrong *et al*, 2007: 197).

Rules

Following the earlier conceptualization, rules will be regarded as exact definitions of proper behaviour in specific circumstances, expressed in terms of prescriptions (instructions), permissions (areas of choice) and proscriptions (prohibitions).

The International Bill of Human Rights provides an authoritative summary of the major rules of the international human rights regime. The 38 rights recognized in the Bill of Rights fall into five broad categories: Rights of the person (life, liberty and security of the person, freedom of movement and of religion, etc.); rights associated with the rule of law (e.g. equal protection under the law); political rights (freedom of expression and assembly, among others); economic and social rights (such as education, healthcare and free choice of employment); and rights of communities (minority rights, self-determination) (Donnelly, 2007: 7-8,79; Kegley, 2009: 245-246).

The International Bill of Rights forms part of international human rights law, which is in turn the single most important repository of the rules of the international human rights regime. Such law protects individuals' rights against acts committed by agents of the state or by other actors and at the same time imposes obligations on the state with regard to its treatment of individuals (Donnelly, 2007: 44; Kerr & Mobekk, 2007: 26). International human rights law contains mainly prescriptions and permissions; prohibitions are typically found in another legal source of rules of the international human rights regime, namely international criminal law.

A collection of key offence in international criminal law, crimes against humanity were first defined in the 1945 Charter of the International Military Tribunal for the Prosecution and Punishment of the Major War Criminals of the European Axis (IMT) (Armstrong *et al*, 2007: 178-179). Two distinct classes of crimes against humanity were specifically prohibited: Inhumane acts like murder, extermination, enslavement and deportation, and persecution based on political, racial or religious considerations. The first category contained offences commonly designated as such in national legal systems, whereas the various forms of persecution listed may not have been outlawed under national legislation; in fact, the Nuremberg Charter provided the first

legal recognition of the concept of persecution (Cassese, 2008: 118; Carrier-Desjardins, 2009: 2).

Nearly 50 years later the Statute of the International Criminal Tribunal for the former Yugoslavia (1993) identified political, racial or religious grounds for persecution, while the Statute of the International Criminal Tribunal for Rwanda (1994) listed 'national, political, ethnic, racial or religious grounds'. The Rome Statute contained the most elaborate definition of persecution found in any international instrument, presenting it as 'the intentional and severe deprivation of fundamental rights contrary to international law' of any identifiable group on political, racial, national, ethnic, cultural, religious, gender or other grounds, i.e. 'by reason of the identity of the group or collectivity'. The ICC Statute also provided the most detailed enumeration of crimes against humanity; apart from persecution, the list of 11 acts featured murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, enforced disappearance, apartheid, and 'other inhumane acts of a similar nature and gravity' (Oosterveld, 2006: 56-57; Swaak-Goldman, 1998: 154).

Werle (2005: 254-259) identified several elements comprising the crime of persecution. The first is an identifiable group or community as the object of persecution. Second, the fundamental rights of which such a group is deprived, include those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, notably the rights to life, personal freedom, and physical and mental inviolability. Third, acts that violate fundamental rights – and so constitute crimes against humanity – can be of a physical, economic or legal nature. The critical consideration 'is always the objectively discriminatory, right-affecting character of the violation'. Fourth, not every impairment counts as an act of persecution, but only 'severe' deprivation of fundamental rights. As for the identity of the perpetrator of persecution, finally, the ICC Statute referred to 'State or organizational policy' to commit an attack against a civilian population as the necessary contextual element for crimes of humanity, thereby confirming that persecution may be committed also by persons unconnected to any state (Cerone, undated).

Institutions

The final component of the international human rights regime and its sub-regime for persecution consists of decision-making structures and procedures involved in formulating, promoting, monitoring, implementing and enforcing regime rules.

At the global level each of the principal organs of the UN has the authority to make decisions on human rights issues: the General Assembly, Security Council, Economic and Social Council and especially its Commission on Human Rights / Human Rights Council, and the Secretariat (and by implication the Secretary-General) (Oberleitner, 2007: 41-63,83-93; Bailey, 1994: 123; Forsythe, 1985: 259-263; *The United Nations and human rights 1945-1995*: 11-13; Mertus, 2009: 41-46,100). There is also a raft of specialized bodies established under the so-called core UN human rights treaties, including the

Human Rights Committee (related to the International Covenant on Civil and Political Rights); the Committee on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights); the Committee on the Elimination of Racial Discrimination (Convention on the Elimination of All Forms of Racial Discrimination); and the Committee on the Elimination of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women) (Oberleitner, 2007: 93-98).

The three major regional human rights regimes in Europe, the Americas and Africa can also be treated as part of the institutions of the international human rights regime. The European human rights structures are centred on the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe (Smith, 2010: 94-110; Donnelly, 2007: 102-104). The inter-American human rights regime is anchored in the Organization of American States (Pasqualucci, 2009: 181-229), while Africa's is associated with the former Organization of African Unity and the current African Union (Okafor, 2007: 63-90).

Although not part of the formal decision-making machinery, non-governmental organizations (NGOs) have firmly established themselves as the 'conscience' of the international human rights regime (Dunne & Wheeler, 2006: 2). By one count there are presently some 250 NGOs whose *raison d'être* is the advancement of human rights or humanitarian causes on a global scale. Among the best known are Amnesty International (winner of the 1977 Nobel Peace Prize), Human Rights Watch, the Minority Rights Group, the International Federation for Human Rights, the International Commission of Jurists, the Human Rights Law Committee, Lawyers without Borders, and the International Committee of the Red Cross (Moyn, 2010; Clark, 2001).

When trying to identify regime institutions dedicated to dealing with persecution, it should be reiterated that there is no international convention dealing exclusively with crimes against humanity collectively, nor one confined to the specific crime of persecution. There are, however, separate international conventions dealing with four other crimes that also fall under the rubric of crimes against humanity: Slavery, genocide (or extermination in the ICC Statute), apartheid and torture. The Convention on the Abolition of Slavery (1926 and 1956), the Genocide Convention (1948), the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) and the Convention against Torture (1984) created formal international agencies to combat the respective international crimes and imposed a duty on states to prosecute the perpetrators (Ramcharan, 2010: 36-43). Insofar as the international campaigns against each of these offences has acquired principled norms, rules and institutions, one could speak of further prohibition sub-regimes within the overall international human rights regime.

Major developments in the enforcement of international criminal law occurred in the 1990s when the UN created international judicial tribunals for the former Yugoslavia and Rwanda, followed by the adoption of the Rome Statute of the ICC in 1998 and the establishment of the court four years later. Invoking the Nuremberg precedent, these criminal tribunals were empowered to bring

individual perpetrators of genocide, war crimes and crimes against humanity to justice (Oberleitner, 2007: 157; Forsythe, 2000: 93-106).

Hybrid courts have been established in among other countries Kosovo (1999), Sierra Leone (2000), Timor-Leste (2000), Cambodia (2004) and Burundi (2005). Also known as internationalized or mixed criminal tribunals, they have some international elements like foreign judges and statutes encompassing international crimes, but their jurisdiction is confined to the countries where they are based (Shaw, 2008: 417-429; Armstrong *et al*, 2007: 198).

The regional human rights regimes are still not nearly as equipped and active as the UN and the various international criminal tribunals to deal with mass atrocity crimes. NGOs, for their part, are as much involved in exposing and counteracting crimes against humanity and other international crimes as they are in confronting 'lesser' human rights violations.

Regime effectiveness

Although not a formal regime component like principled norms, rules and institutions, the issue of regime effectiveness should be part and parcel of any serious study of international regimes. Following Young (1999: 80), a regime's effectiveness can be measured in terms of compliance with its rules; compliance requires enforcement; and enforcement demands a government or public authority responsible for creating and operating enforcement mechanisms. Compliance with regime injunctions can in turn be taken as an expression of regime strength, whereas inconsistency between regime rules and state conduct indicates regime weakness. There are, of course, gradations of compliance and non-compliance (Haggard & Simmons, 1987: 496; Krasner, 1983: 4-5) and regime effectiveness is not fixed but can change substantially over time – for better or worse (Young, 1999: 13).

All this raises a pertinent question: Why do states comply with international rules of (domestic) conduct? Realist contentions about power suggest that states adhere to rules because someone – especially more powerful – had made them; rational choice theorists highlight states' self-interest; the 'normative pull' of rules regarded as legitimate is a familiar liberal notion; legal process explanations focus on the internalization of international rules into domestic legal structures (Koh, 2006: 307-310); and according to the cosmopolitan perspective states desire a good international reputation (Drezner, 2007: 65).

Additional elements of the analytical framework

Although persecution is a punishable crime under international law, very few cases of persecution have resulted in legal action. An obvious reason is that the entire issue is highly politicized: The persecution of a group of people by the state is usually a key component of a national political order and, moreover, traditionally protected under the non-intervention corollary of state sovereignty. International responses to persecution are determined by political rather than legal considerations, and the actual reactions are typically political

rather than legal. To accommodate these aspects, the analytical framework requires both additions and qualifications to the formal elements of an international regime (i.e. principled norms, rules and institutions).

Identifying persecution, persecutors and persecuted

Since the framework is devised for a political rather than legal inquiry, it is not necessary to apply the same stringent criteria as a court of law in determining persecution. *Prima facie* evidence of widespread and systematic discrimination on identity grounds will suffice. A further caveat is that the framework (and the empirical inquiry already underway) will focus on political, racial, national, ethnic or cultural grounds; religious, gender and other motivations are excluded, except if they are related to the first five. The targets of persecution would thus be political, racial, national, cultural or ethnic groups, often constituting numerical minorities in societies.

Designating an act as persecution should be a much easier task for dispassionate analysts than for policy-makers, as witness the controversies surrounding the designation of particular atrocities as genocide (Power, 2003). Many governments may for patently political reasons be loath to define severe, systematic discrimination as persecution since the latter is a punishable crime under international law.

Although the analytical framework concentrates on persecution, it should be borne in mind that persecution will in practice usually be accompanied by other crimes against humanity, like torture, deportation and imprisonment. Allowance should also be made for the possibility of persecution escalating to the level of genocide, the grossest mass atrocity.

While international law acknowledges persecution practised by state and non-state actors, the present framework deals with persecution perpetrated by state organs only.

External responses to persecution

External parties (especially states and IGOs) do not necessarily respond in a critical or disapproving fashion to instances of persecution. There could instead be expressions of open or tacit support for another state's persecution of its population, or denials that persecution has been practised, or – most commonly – neutrality and indifference on the part of foreign actors.

When it comes to international reactions aimed at changing the offensive conduct (persecution) of a target state, a whole inventory of responses is available to states acting   collectively through the UN or a regional organization or individually. Envisage a spectrum of responses with constructive diplomatic engagement with the errant state at the one extreme and military action at the other. In between the menu for choice includes moral suasion, verbal censure, judicial proceedings, and sanctions of various kinds. Human rights NGOs, lacking the 'teeth' of some IGOs, are adept at 'naming, blaming and shaming' offenders.

The analytical framework should also provide for preventive action by foreign actors in a bid to counter-act identity-related discrimination before it reaches

the level of persecution. In this regard the 'prevention toolbox' of the responsibility to protect doctrine could be useful. Crimes against humanity, including persecution, after all constitute one of the four mass atrocities (together with genocide, war crimes and ethnic cleansing) with which R2P concerns itself (Evans, 2008: 79-104).

It should be reiterated that persecutors, like other serious human rights violators, are not automatically held to account by the international community. One reason is that members of the UN, the core institution of the international human rights regime, often cannot agree on the nature and severity of the human rights transgression and on the appropriate collective response.

The following variables may influence a state's reaction to a *prima facie* case of persecution: The gravity of the human rights violation (what is the extent of human suffering?); the identity of the persecutor (ally, friend or foe?); the identity of the victims (related to the responding state's own population?); the location of the 'scene of the crime' (neighbourhood or distant?); existing international responses to the persecution (strong or weak?); the prevailing international normative framework (Cold War era or thereafter?); and other international preoccupations or distractions (any major crises?).

In deciding if, when and how to respond to instances of persecution, states are often accused of practising double standards and hypocrisy. The former occurs when some offenders are singled out for censure (or even punishment) and others committing similar wrongdoing go scot-free (Kirkpatrick, 1983). Hypocrisy is evident when a critic does not practice what it preaches to others, i.e. being guilty of the same type of misdemeanour as the target of the critic's denunciation (Runciman, 2008).

Persecutors' reactions to external pressure

The so-called spiral model of human rights change, devised by Risse and Sikkink (1999: 22-35), provides a useful analytical tool to study persecuting governments' responses to foreign pressure to mend their errant ways. The first responsive posture, called 'repression and the activation of network', sees the target government resorting to varying degrees of domestic repression, which may restrict the dissemination of information about its abusive behaviour and obstruct the activation of a transnational advocacy network. When such a human rights network manages to obtain sufficient information about the local situation, the rule-violating country can be placed on the international agenda. The internationalization of the situation leads to the second phase in which the transnational network starts lobbying against the repressive government. The latter, in turn, denies the charges levelled from abroad, invokes the principle of non-interference in its domestic affairs, and rejects the validity of the human rights standards it allegedly violates. The third phase is marked by tactical concessions. As international pressure intensifies, ranging from shaming to sanctions, the offending government introduces cosmetic changes to appease foreign critics. Although forms of repression (or discrimination) may continue, the target government begins to 'talk the human rights talk' and no longer denies the validity of the human rights norms at issue. During the fourth phase

the target government enters into a 'prescriptive status', meaning that it accepts the legitimacy of international human rights standards, pledges to implement them, and stops denouncing foreign criticism as illegal and illegitimate interference in the country's internal affairs. Apart from ratifying international human rights conventions and institutionalizing their norms in domestic laws, the government engages in dialogue with its critics. In the last phase of what amounts to a process of socialization, norm-consistent behaviour takes root. As Risse and Sikkink explained, 'international human rights norms are fully institutionalized domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law'. The phase may also be marked by a change of government, with new leaders dedicated to international human rights standards.

The abolition of persecution may well require more than a change of policy or even government. Where a ruling elite's hold on power depends on the maintenance of systematic, widespread and institutionalized discrimination against a certain segment of the population, the elimination of persecution will demand thorough-going domestic regime change, i.e. changes in the norms, values, authority structures and personnel. Given these radical implications, persecutors may cling to power in the face of intense external pressure. Risse and Sikkink (1999: 22-35) indeed conceded that their spiral model does not take evolutionary progress towards norm implementation as granted; the process may be interrupted, causing a reversion to the *status quo ante* or a stabilization of the *status quo*.

Case studies

A tentative selection of case studies of persecution, drawing on work in progress, illustrates different forms of persecution from different parts of the world at different periods of time (from the 1970s – when the international human rights regime and its persecution sub-regime were consummated – until 2010). The chronological categorizations do not mean that the particular instances of persecution occurred in a specific decade only; they may well have started earlier and continued afterwards. The purpose is to provide a sense of the incidence of persecution over the period of 40 years and allow for comparative analysis. The selection is made on *prima facie* evidence of persecution and limited to systematic discrimination primarily on the grounds of race, ethnicity, culture, nationality and politics; persecution based mainly or exclusively on religion and gender are excluded.

1970s: South Africa, Israel and Uganda
1980s: Zimbabwe, Iraq and Guatemala
1990s: Croatia, Burma and Burundi
2000s: Sri Lanka, Sudan and Fiji.

Conclusion

Although declared a punishable crime against humanity in 1945, the practice of persecution has not been eliminated. Many states have since then discriminated against segments of their populations on identity-related grounds like ethnicity, culture, nationality and race. The formal prohibition of persecution under international law has thus not been fully upheld, and the instances of perpetrators being prosecuted before national or international courts of law remain very limited. True, there are several cases of persecution being abolished, the most celebrated being that of apartheid, which had been targeted for an extraordinary global moral crusade backed by collective punitive measures against white-ruled South Africa. Few if any other contemporary cases of persecution have provoked such sustained universal outrage. The gap between international law and national practice and the divergent nature of external responses to cases of persecution are two sound reasons for a comparative study of persecution that both acknowledges the legal aspects involved and allows one to probe the political considerations surrounding the practice of persecution and the international reactions thereto.

The analytical framework proposed here for such an inquiry is based on regime analysis, more specifically the functioning international human rights regime. Within that regime, a subordinate regime concerned with the prohibition of persecution can be identified. Regime analysis enables a researcher to determine the principled norms and legal rules related to persecution, and the formal inter-governmental institutions involved in enforcing the prohibition of persecution (including the legal prosecution of the agents of persecution). As an extension of the international human rights regime, the sub-regime for persecution also operates in a highly politicized environment. This critical feature has to be accommodated in the framework for analysis so that the key questions driving the inquiry can be addressed properly: Who persecuted whom, why, when and how? What were the international community's responses? And how did the perpetrators react to pressure to cease their offensive conduct? The mere persistence of persecution on identity-related grounds, which the selection of case studies will illustrate, is indicative of weakness in the international human rights sub-regime on persecution.

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