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“CRIMINALISATION OF WAR”

1. I would like to thank IIU for giving me this opportunity to talk on a subject close to my heart – the Criminalisation of War.
2. Strangely it is hard for people to think of war as a crime. Historically there have always been wars. Some are minor and do not last for long. But some are world wars, costly in terms of human lives, of property and of money. They are so costly that they bankrupt both the victors and the vanquished when they ended.
3. Wars were resorted to in the past because of the desires of kings to enlarge their kingdoms; of powerful nations to gain resources and trade. But wars were also fought over religious and ideological differences.
4. They all boil down to one thing – greed; the greed of kings and emperors; the greed of nations and traders to enrich themselves, or dominate their regions or the world.
5. But whatever may be the causes of the wars, they all involve killing people. The aggressors prepare to kill people to achieve their objective and defenders are forced to kill people in defence.
6. Initially when the population of the world was sparse, the killings were not massive in scale. But as populations grew, the wars involving the big nations resulted in mass killings of millions, non-combatants included.
7. In the past no quarters were given nor expected. The winner would massacre the whole population of the towns and the country until the victors walk ankle deep in blood. Others pile up the severed heads of the defeated people, soldiers and civilians in huge pyramids. Frequently the victims would be tortured first before being executed.
8. Wars make beasts of men. They commit heinous atrocities which normally they would shrink from. In Bosnia-Herzegovina, Serbs thought nothing of raping and killing their next-door Bosnian neighbours whom they had always known. The British tied the members of families of Indian Rajas to the mouth of cannons and then fired the cannons. The Germans, a cultured people, tortured and massacred millions of Jews. And now we see the great proponents of human rights legalising torture and carrying it out on hapless prisoners incarcerated without charges and without trial.

9. In modern wars, despite the injunctions against killing non-combatants, the bombs and the missiles, showed no respect for civilian status. All would be killed or have their limbs torn from their bodies.

10. For a long time deserters would be executed by firing squads practically on the spot "pour encourager les autres".

11. Wars were not always fought between equally-matched pairs of countries. Because of the tremendous damage and deaths resulting from the two great wars for the principal warring countries, today wars between the powerful are avoided. But the powerful still wage wars against the weak.

12. Yes, the two World Wars were fought to end wars. But they may confront each other in cold wars and use proxies to fight for them. Those proxy wars still involve killing people.

13. For the small nations the great wars did not end their wars. When they are not fighting other small nations they may face the might of the great powers. Against these great powers they are powerless. They would be shocked and awed as their people, men, women and children, the sick and the disabled are blown to kingdom come or have their limbs torn off or their heads ripped from their bodies. Their cities would be razed to the ground and be consumed by fires, raging fires which suck up all the oxygen in the air causing those who survive the blast to be starved of oxygen, to fall unconscious and suffocate to death.

14. Depriving the enemy of oxygen was a method learnt in Dresden, Germany during the last world war. Simultaneous carpet bombing by thousands of bombers caused a fireball to rage over the city, consuming all the oxygen so that even those in shelters would die of suffocation. It was a lesson well-learned by the militarists and now the tactic is being used to suck out all the oxygen when the victims shelter in deep caves. The discovery delighted the great power militarists.

15. Fighting wars with bows and arrows resulted in only relatively small numbers being killed. The more you kill the better your chances of winning. And so long ago the search was started on improving the capacity to kill and to destroy. The search has never stopped.

16. The Chinese discovered gunpowder but thought the noise made was great fun for New Year celebrations. If sufficiently loud it could stop the dragon from swallowing the moon during eclipses.

17. Then the Europeans discovered the Chinese explosive and immediately realised that it could hurl missiles further. And so the cannon was invented. The round stone cannonballs could destroy the walls of fortresses and of course bring death to armies beyond the reach of arrows.

18. The search for propellants to hurl destruction further and further away have never stopped. Artillery guns had bigger bores and longer barrels. The

cannonballs were replaced with shells filled with explosives so as to explode and kill and destroy more.

19. The shells grow bigger. The naval guns could hurl 16" diameter shells for more than 20 miles. Big Bertha was the grand-daddy of guns. Mounted on railway tracks, Big Bertha fired huge shells from German-held territory to reach the cities of France.

20. Then the Brazilians invented flying machines. Immediately the militarists saw the possibilities of killing people by dropping bricks on the trenches in the Western Front. But why only bricks? They don't kill enough people. Why not drop explosives. And so the bombs containing high explosives join the array of killer weapons. They got bigger and more destructive. But could they become even more destructive?

21. No sooner said than done. Nuclear fission was the answer. The explosives would be so huge that whole towns could be wiped out.

22. The proof of the pudding is in the eating. The bomb had to be tested in real life. Conveniently a war was being fought. Killing a few thousand enemies, babies, children, women, the sick and the infirm would be worth it if scientific theories could be proved.

23. And so it was proven that the atom bomb performed beyond expectation. One hundred and fifty thousand Japanese were killed immediately and tens of thousands more died later from radiation sickness. The cities of Hiroshima and Nagasaki practically vanished.

24. The real life test would not have been carried out if there was no war. In peace even militarists would shudder at deliberately killing so many people. They could not have persuaded a Government to kill 150,000 people to test the atomic bomb. But war legitimised the killing. That is what wars can do. It legitimises the illegitimate. It legitimises killing people. It legitimises the destruction of towns and cities and the water reservoirs, the power plants, the roads and the other means of communication, the hospitals and the schools etc etc. Nothing is illegitimate in war. Detention without trial and torture of innocent people are all legitimate.

25. Yet we boast of our modern civilisation with its human rights and freedom. We think that killing people is such an inhuman act that we proscribe death sentence on a murderer. Life is too precious. But still we think that killing millions in war is permissible and legitimate.

26. Not only that, we actually regarded the killings as glorious, as praiseworthy. The killers are regarded as heroes. Statues are erected in their honour and memorial ceremonies are held to remember the killers.

27. There must be something wrong with us, with our civilisation. How can it be that the killing of one person is a serious crime, a terrible crime

punishable by the most severe punishment, but the killing of a thousand, a hundred thousand or a million is not a crime but is in fact glorious.

28. There have been many things which were accepted as normal and permissible in the past which our present civilisation reject today.

29. Slavery was accepted as normal, including the inhuman treatment meted out to them. Trade in slaves were fully countenanced by the world even when it was known that sick and disabled slaves were thrown into the sea to the sharks.

30. But today slavery has been abolished.

31. This marks an important stage in the progress of modern civilisation.

32. But we have gone beyond that. We now believe in gender equality, in animal rights even.

33. Clearly in the progress of human civilisation we have rejected many past practices which are invariably regarded as incompatible with the concepts of justice and civilised values. Many now regard capital punishment as inhuman.

34. Our civilisation have made much progress. Our values are much superior to those of the past. We feel we can stand proud over our sense of justice, our compassion and our fairness.

35. Yet we fail, we must be regarded as having totally failed as we continue to accept war as a means of settling conflicts between nations. We know that wars mean killing people. We, without exception regard killing people as a serious crime. But we nevertheless regard the killing of people in war, the killing of masses of people, of innocent people as not constituting a crime. It is a contradiction. It is illogical. It does not reflect rationality. It does not support our claim to being civilised.

36. If war is made a crime then how can conflicts between nations be resolved? In human society, especially in civilised human societies, laws govern the relations between members of the society. Many laws are meant for the resolution of human conflicts.

37. Thus if a thief steals the money of another person, the victim is not entitled to punish the thief by himself. He may not take the law into his own hands even if he were to apprehend the thief. The law requires that the thief be tried in a court of law and punished according to what the law prescribes.

38. Other societal laws cover such acts as assault, libellous statements, manslaughter and murder. The aggrieved party may not take action on his own beyond reporting the matter and submitting to the legal processes involved.

39. In all cases the judgements must be by a third party, a judge not directly involved in the case.

40. The belief that there is something criminal about war is not something new. When the Allies won the Second World War, the leaders of Germany and Japan were tried in Nuremberg and Tokyo. They were invariably found guilty and many were sentenced to death.

41. But the trial was carried out by the victors in courts set up by them. This is a travesty of justice for the judges were entirely chosen from the victorious countries. There cannot be impartiality.

42. Obviously if the Axis nations had won the war they would be setting up the courts and the Allied leaders would be put on trial. The German and Japanese judges would certainly find the leaders of the United Kingdom and the United States guilty of war crimes. Churchill and Roosevelt would certainly be hanged.

43. No matter who wins, if the winner sets up the court to try the losers, there will be no justice. The Nuremberg and Tokyo courts must be considered as kangaroo courts for the purpose of taking revenge against the enemy. Courts are not about taking revenge. Courts are for dispensing justice.

44. To dispense justice there must be laws, formulated and formally passed by a body that represents the people the laws are to govern. Laws may not be legislated after the event and applied retrospectively. The laws must be already in place when the crime is committed.

45. If we are going to see justice when war is made a crime, then the laws must be applied against the perpetrators who breach the law knowing that it is a crime.

46. Of course the courts and the judges must be from countries which are not involved in the conflict and are neutral. It is for the international body, the United Nations General Assembly for example to set up the court and choose the judges. The Security Council may have a representative but must not exercise its veto.

47. Who should be tried for war? The first thing to do would be to determine who are the aggressors and who the defenders. The defenders would be fighting a war also. Would the defenders be guilty also in waging a war?

48. The first task must therefore be for the court to determine who are the aggressors and who the defenders. This may be easy because it is often so obvious who the aggressors are and whose country was being attacked. In other cases it may not be easy to identify the aggressors and the defenders.

49. This question must be determined by the court. Having determined who the aggressors are, the court will have to task a specific agency to

investigate both the aggressors and the defenders. The investigators would be akin to the IO or Investigating Officers of the police in national crimes.

50. Then there will be the question of responsibility for the act of aggression. Would the whole country be charged or only the leaders? Again it is for the court to decide.

51. The law must provide for the kind of punishment for the aggressor country and the leaders involved. Reparations imposed on Germany following the first World War impoverished that country so much that it contributed to the rise of Hitler and the Second World War.

52. The crimes of war is not the same as the war crimes committed by leaders or individuals in the course of fighting the war. War crimes may be perpetrated both by the aggressors and the defenders. Criminalising war is not concerned with war crimes. For war crimes a special international court can be set up. The only thing required is that such a court should not be manned by the combatant countries.

53. The court to try those allegedly guilty of resorting to war as a solution to international conflict should be concerned only with the act of going to war.

54. If war is a crime how should conflicts between nations be resolved so that war is not resorted to. There are at least three specific ways.

55. The conflict may be resolved through negotiation between the two countries. The negotiations may be assisted by the UN as an international body or by any other country not directly involved in the conflict as for example by a country friendly to both countries.

56. If negotiation is not possible or it fails, the dispute can be put up for arbitration by a neutral panel or tribunal. Both parties must be agreeable to arbitration if it is to be effective and both must be prepared to accept the decision of the arbitrators.

57. If both fails, then the conflict must be solved by placing the case before a special court of law for judgement. This should be compulsory after a reasonable time is allowed during which solution by negotiation or arbitration had been gone through and failed.

58. If we have these solutions for solving conflicts, then it would be possible and practical to make war a crime.

59. To criminalise war the law-making institutions of all nations must be willing to legislate against war. Japan after the Second World War legislated against wars. It would not resort to war as a means to settle disputes with other nations.

60. The way to criminalise war is to have the legislative bodies of nations to classify war as a crime, There is a great role for the people to play here,

especially in democratic countries. They must insist that candidates for elections must promise to legislate against war. Failure to make the promise would result in support being withdrawn and the candidate in elections to the supreme law-making body would lose.

61. The people should be made aware the vast amounts of public money being spent on maintaining a standing army, on the research, development and production of weapons. Should there be a war even more money would be expended. In the end even if the war is won the country would be bankrupt.

62. Constant and sustained discussion and publicity on the horrors of war and the waste of public fund should convince the electorate that they should agitate against war and demand their representatives in the congress or parliament to legislate against war.

63. All these would take time as it took decades to make slavery a crime. But eventually war would be made a crime and would be avoided when there is conflict between nations.
