

Part III—ICTR

by Alexandra L. Wisotsky*

General

In November 2000, the UN Security Council passed Resolution 1329, increasing by two the number of judges to the International Criminal Tribunal for Rwanda (ICTR). The President of the ICTR will now select two of the Tribunal's eleven judges to sit on the common Appeals Chamber. During 2000, six indicted suspects were transferred to the UN Detention Facility in Arusha, Tanzania: political leader Kamuhanda, religious leader Ntakirutimana, and military leaders Ndindiliyimana, Nzuwonemeye, Muvunyi, and Sagahutu.

From December 1, 1999, to December 31, 2000, the Appeals Chamber issued judgements in the *Serushago* case and the *Kambanda* case, and issued a decision in the *Barayagwiza* case, one of several interlocutory appeals. It heard oral arguments in the appeals of both *Akayesu* and *Kayishema & Ruzindana*, although no judgements have yet been rendered. The ICTR Trial Chambers rendered judgements on the merits in the *Rutaganda* and *Musema* cases, and one judgement after a guilty plea in the case against the Belgian national, Ruggiu. The trial was completed in the *Bagilishema* case, but no judgement has yet been delivered. At the end of 2000, ongoing proceedings before the ICTR Trial Chambers included the case against Ntagerura, Bagambiki, and Imanishimwe (known as the "Cyangugu" case), the Semanza trial, and the trial against Barayagwiza, Nakimana, and Ngeze (known as the "Media" trial).

Appeals Chamber

Serushago

Omar Serushago pled guilty to genocide and crimes against humanity (murder, extermination, and torture), and was sentenced by Trial Chamber I to 15 years imprisonment in February 1999. Serushago appealed his sentence before the Appeals Chamber, which upheld the Trial Chamber in a written decision on April 6, 2000, in the case of *Omar Serushago v. The Prosecutor*, Case No. ICTR-98-39-A.

The Appellant argued that the imposed sentence should be reduced because the Trial Chamber failed to give due weight to the mitigating factors in the case, and because the sentence was excessive in light of the sentencing practices of Rwandan courts.

The Appeals Chamber found no merit in the Appellant's first argument. Although Article 23 of the Statute of the Tribunal (Statute) and Rule 101 of the Rules of the Tribunal outline the factors that a Trial Chamber must consider in sentencing, they leave the due weight to be attached to each to the discretion of the Trial Chamber. The Appeals Chamber held that with respect to the weight accorded to mitigating factors, the Appellant failed to show that the Trial Chamber committed any error.

Regarding Appellant's second argument on appeal, the Appeals Chamber found that although Article 23 allows the Trial

Chamber to take into consideration the practices of Rwandan courts regarding prison sentences, it does not require the Trial Chamber to conform to those practices. Thus, the Appeals Chamber found that a 15 year sentence was proper. The Appeals Chamber held that although it has the power under Article 24 to change a sentence imposed by a Trial Chamber, it should not exercise such power in the absence of an error of discretion, or a failure to apply the applicable law on the part of the Trial Chamber.

Barayagwiza

In November 1999, the Appeals Chamber issued a decision to release Jean Bosco Barayagwiza following his motion challenging the legality of his arrest and detention. The Appeals Chamber dismissed the indictment with prejudice and ordered Barayagwiza returned to Cameroon, where he had been arrested. The decision was based on violations of Barayagwiza's rights as

a result of the length of his detention without charge or appearance before the Tribunal. After a request by the Prosecutor, a somewhat differently constituted Appeals Chamber reviewed the initial decision. Based on new evidence, the Appeals Chamber reversed its decision on March 31, 2000, in *Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72.

The Prosecutor requested review pursuant to Article 25 of the Statute, and Rules 120 and 121 of the Rules of the Tribunal. Article 25 permits either party to submit a request to review a decision if a new fact was discovered that was not known at the time of the proceedings and could have been a determinative factor in the decision. Rule 120 allows either party to move the Tribunal to reconsider or review its judgement where a newly discovered fact was not known to, and could not have been discovered through due diligence by, the moving party at the time of the initial proceedings. Rule 121 requires that the Tribunal review and revise its judgement if it finds the new fact could have been outcome determinative.

The Appeals Chamber considered the distinction between "genuinely new facts which may justify review and additional evidence of a fact" previously considered, and held that a new fact may be one that occurred prior to the trial. Next, the Appeals Chamber found that the Article 25 right to appeal attaches after a conviction as well as after the dismissal of a preliminary motion before a Trial Chamber. Additionally, although a request for review may only be considered where there is a final judgement, the November decision was effectively a final judgement, since it dismissed the indictment, thereby terminating proceedings.

In considering the merits of the case, the Appeals Chamber affirmed the factual basis of its November 1999 decision. The Appeals Chamber divided the detention of Barayagwiza into three periods and examined each period to determine whether there was a violation of his rights. The periods included the ten months covering his arrest in Cameroon and the extradition procedure; the nine-month delay in the request for Barayagwiza's

The Appeals Chamber revoked Barayagwiza's release and determined that violations of his rights should be remedied at trial. If found guilty, Barayagwiza will serve a reduced sentence; if acquitted, he will receive financial compensation.

continued on next page

provisional detention through his transfer to the detention center in Arusha; and the three months between his arrival at the detention unit in Arusha and his initial appearance before the Tribunal.

First, based on the discussion of the ICTR's extradition request before the Cameroonian courts, the Appeals Chamber concluded that Barayagwiza knew the general nature of the charges against him by May 1996 at the latest. Thus, Barayagwiza spent 18 days in detention without knowledge of the charges against him. This delay violated the Accused's right to be expeditiously informed of the charges against him. The Appeals Chamber noted, however, that an 18-day delay is far less onerous than a 10-month delay.

Second, a report by the Supreme Court of Cameroon indicated that while the extradition request was submitted immediately to the President of Cameroon, a delay resulted from scheduled national elections. Thus, the human rights violations of Barayagwiza in Cameroon were not attributable to the Prosecutor.

Third, while Barayagwiza was detained in Arusha, scheduling problems with the Defense delayed his initial appearance before the Tribunal. The Appeals Chamber, however, found that only 20 days elapsed from the time the Defense initially agreed to appear to the date of actual appearance. Nonetheless, the Chamber held that there was still a substantial delay in violation of the Accused's rights.

Thus, the Appeals Chamber found that the new facts about Barayagwiza's arrest and detention significantly reduced the failings of the Prosecutor, and the severity of the violations of the accused's rights. Additionally, the new facts could have impacted the decision of the Chamber. In light of this, the Chamber found the remedy issued in the November 1999 order was disproportionate to the events. The Appeals Chamber revoked Barayagwiza's release and determined that violations of his rights should be remedied at trial. If found guilty, Barayagwiza will serve a reduced sentence; if acquitted, he will receive financial compensation.

Trial Chambers

Rutaganda

On December 6, 1999, Trial Chamber I sentenced Georges Rutaganda to life imprisonment in *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T. Rutaganda was charged with genocide, crimes against humanity (extermination and murder), and violations of Common Article 3 to the Geneva Conventions (murder). He pled not guilty on all counts.

The Trial Chamber found that Rutaganda, second vice-president of the youth wing of the *Interahamwe*, participated in violence against Tutsis by distributing weapons to members of the *Interahamwe*, ordering the killing of Tutsi civilians and refugees, and forcibly transferring Tutsi refugees. The Trial Chamber also found that Rutaganda personally killed Emmanuel Kayitare, a Tutsi refugee. Although the *Interahamwe* separated Tutsis at roadblocks and took them to Rutaganda's garage, it was not established that Rutaganda himself erected and stationed *Interahamwe* members at roadblocks near his garage.

Rutaganda was charged with individual criminal responsibility under Article 6(1) of the Statute. The Trial Chamber found that responsibility under Article 6(1) is incurred either as a principal, or for the acts of others, and that responsibility results from the planning, instigating, ordering, committing, or aiding

and abetting of a crime punishable under Articles 2-4 of the Statute. Participation includes an unlawful act or a failure of a duty to act. Because attempted genocide (Article 2(3) of the Statute) is an inchoate crime, individual criminal responsibility is incurred regardless of the result.

With respect to the genocide charge, the Trial Chamber held that the special "genocidal" intent of the perpetrator is inferred from evidence such as the scale and general nature of the crimes, and the Accused's patterns of conduct. Given the widespread violence against Tutsis throughout Rwanda and Rutaganda's participation in, and authorization of, attacks against Tutsis, the Chamber held him individually criminally responsible under Article 6(1).

In considering the charges of crimes against humanity, the Trial Chamber addressed the issue of cumulative charges arising from the same acts. Adopting the test in the *Akayesu* Judgment, the Trial Chamber held that a perpetrator may be convicted for multiple offenses relating to the same set of facts where the offenses have different elements, where the laws protect different interests, or where it is necessary to record a conviction for both offenses in order to fully describe the acts. The Prosecutor indicted Rutaganda on one count of extermination and three counts of murder as crimes against humanity. The primary difference between the two crimes is that murder involves the intentional killing of a person, while extermination is a crime against a group of people and requires an element of mass destruction that is not necessary for murder. Because murder and extermination share the same elements, and the count of extermination and one of the counts of murder arose from the same act, the Trial Chamber chose to hold Rutaganda responsible only for extermination with regards to that act. The Trial Chamber did, however, find Rutaganda guilty of murder as a crime against humanity for other acts, namely aiding and abetting in the detention of Tutsis and killing Emmanuel Kayitare, a Tutsi refugee.

Finally, the Trial Chamber considered the applicability of Common Article 3 and Additional Protocol II, punishable under Article 4 of the Statute. Given the nature of the conflict, the Trial Chamber adopted the "evaluation test," under which the intensity and organization of the parties to the conflict are considered in order to determine whether an armed conflict existed. There must also be a nexus between the Accused's acts and the armed conflict. The Trial Chamber found that an internal armed conflict existed at the time of Rutaganda's acts, the population under attack was protected, and Rutaganda had sufficient authority to be held responsible under Article 4. The Trial Chamber was not convinced, however, that Rutaganda acted in support of the armed conflict. Nor could the Trial Chamber rely solely on the finding of genocide to establish violations of the Geneva Conventions and Protocol II. Thus, Rutaganda was acquitted on the war crimes charges.

In sentencing Rutaganda to life imprisonment, the Trial Chamber considered the seriousness of the crimes, his position of authority, his leading role in the execution of the crimes, and his lack of remorse.

Musema

On January 27, 2000, Trial Chamber I sentenced Alfred Musema to life imprisonment, in Case No. ICTR-96-13-T, *The Prosecutor v. Alfred Musema*. Musema was indicted for genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity (extermination, murder, rape, and "other inhumane acts"), and violations of Protocol II and Common Article 3 to the Geneva Conventions. He pled not guilty on all counts.

continued on next page

Musema, a political and economic leader in his *préfecture*, was held responsible for committing, and ordering his subordinates to commit, attacks on Tutsi refugees. He provided transportation and weapons during certain attacks on Tutsis. After one such attack, he raped a Tutsi woman; whether he ordered others to commit rape was not proven.

Musema was charged with individual criminal responsibility under Article 6(1) of the Statute, as well as with superior responsibility under Article 6(3). Superior responsibility under Article 6(3) attaches when the accused “knew or had reason to know” that the subordinate was about to commit, or had committed, a criminal act, and “failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.” The Trial Chamber held that those with authority over others, whether military or civilian, may incur superior criminal responsibility for violations of international humanitarian

The Trial Chamber found that by virtue of his position, Musema held effective control over the events alleged, and that he had the ability and responsibility to take reasonable measures to prevent or punish the perpetrators of crimes. Thus, Musema could incur both individual and superior criminal responsibility under Articles 6(1) and 6(3) of the Statute.

law. A civilian may be convicted of superior responsibility only where he had either *de jure* or *de facto* control over the persons committing the violations. The Trial Chamber found that by virtue of his position, Musema held effective control over the events alleged, and that he had the ability and responsibility to take reasonable measures to prevent or punish the perpetrators of crimes. Thus, Musema could incur both individual and superior criminal responsibility under Articles 6(1) and 6(3) of the Statute.

Musema was found guilty of participating or aiding in some of the attacks against Tutsi refugees, but he was not found guilty of all the acts alleged. Complicity in genocide, the Trial Chamber held, requires the accomplice to have knowingly or voluntarily associated himself with the principal who committed the act. Since it is impossible to act as both the principal and the accomplice in the commission of an act, the Trial Chamber held that Musema could not be held responsible for both genocide and complicity in genocide on the same facts. The Trial Chamber found Musema to have acted with genocidal intent. Additionally, as his acts were consistent with the ongoing pattern of widespread and systematic attacks on the Tutsi civilian population, Musema was also found guilty of crimes against humanity for extermination and rape. The Prosecutor failed to establish, however, Musema’s guilt of crimes against humanity for “other inhumane acts” because the allegations required more specificity than provided. Finally, despite the existence of an internal armed conflict, the Trial Chamber did not find a nexus existed between Musema’s acts and the armed conflict; therefore, he was found not guilty of war crimes.

In imposing a sentence of life imprisonment, the Trial Chamber considered the seriousness of the crimes, Musema’s leading role

in the acts, and his failure to use his authority to take reasonable measures to prevent the crimes or punish the perpetrators.

Ruggiu

On June 1, 2000, Trial Chamber I issued its written decision in *The Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, following a guilty plea entered by the Accused. This case marks the first against a European involved in the Rwandan conflict.

As a Belgian journalist, Ruggiu broadcast discriminatory and threatening remarks against Tutsis, moderate Hutus, and Belgians, knowing that these broadcasts would incite mass violence. Ruggiu pled guilty to direct and public incitement to commit genocide under Article 2(3) (c) of the Statute, and to crimes against humanity (persecution) under Article 3(h) of the Statute.

The Trial Chamber considered the nature and gravity of the crimes, the use of mass media as a tool to mobilize and incite the population to commit crimes and encourage ethnic hatred and violence, and the extent of Ruggiu’s involvement. The Trial Chamber found, however, that Ruggiu was a subordinate at the radio station and played no part in making editorial policy. The Trial Chamber further considered that Ruggiu’s guilty plea and cooperation with the Prosecution showed a desire to take responsibility for his acts. Moreover, Ruggiu expressed remorse for his acts. After weighing the aggravating and mitigating circumstances, the Trial Chamber sentenced Ruggiu to 12 years on each count, to be served concurrently.

**Alexandra L. Wisotsky is a 1997 graduate of the Washington College of Law and a lawyer associated with the War Crimes Research Office.*

Part IV—ICTY (2001)

by Kelly D. Askin*

Kunarac Judgement

Sexual slavery during the Bosnian conflict

The Tribunals for Rwanda and the former Yugoslavia have handed down several important decisions already this year, though perhaps none is as momentous as the *Kunarac* Judgement. On February 22, 2001, Trial Chamber II of the International Criminal Tribunal for the former Yugoslavia (ICTY) rendered an historic first in *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T & IT-96-23/1-T, by finding two of the accused guilty of enslavement and rape as crimes against humanity for what effectively constituted sexual slavery. The original indictment was against eight Serbs accused of a variety of sex crimes committed against predominately Bosnian Muslim detainees in the municipality of Foča. The indictment alone was unique in its exclusive focus on sex crimes. This trial was against three of the accused who had been arrested and transferred to the Tribunal’s detention unit in The Hague: Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković.

Kunarac, commander of a special reconnaissance unit of the Bosnian Serb Army, was accused of torture, rape, and enslavement as crimes against humanity, and torture, rape, and outrages upon personal dignity as violations of the laws or customs of war. Kovač, a sub-commander of the military police and a paramilitary leader in Foča, was charged with enslavement and rape as crimes against humanity, and rape and outrages upon personal dignity as violations of the laws or customs of war. Vuković, also a sub-commander of the military police and a paramilitary

continued on next page

leader in Foča, was charged with torture and rape as crimes against humanity and violations of the laws or customs of war.

All crimes were linked to sexual violence. The convictions for torture and enslavement were based on evidence demonstrating that the victims had been tortured by means of rape or enslaved primarily to effectuate continuous rape. The outrages upon personal dignity conviction was based on conduct including forcing three girls to dance naked on a table for the soldiers' entertainment.

The evidence established that the accused physically raped and enslaved several women and girls, and had also facilitated rape and sexual slavery perpetrated by others by taking victims to locations where they would be systematically raped or by acts such as loaning, trading, or selling the women to others. Many victims were gang-raped publicly while detained in various homes, schools, and gyms before being taken to other locations where they were enslaved and repeatedly raped by the accused or other soldiers for periods varying between days or months at a time.

Article 3 of the ICTY Statute grants the Tribunal jurisdiction to prosecute violations of the laws or customs of war. The indictment alleged that the accused committed outrages upon personal dignity, rape, and torture in contravention of Common Article 3 to the 1949 Geneva Conventions. Summarizing the general requirements for applying Common Article 3, the Judgement, in reliance on jurisprudence of the Tribunal, noted: "(i) The violation must constitute an infringement of a rule of international humanitarian law. (ii) The rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met. (iii) The violation must be 'serious', that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim. (iv) The violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule. (v) There must be a close nexus between the violations and the armed conflict. (vi) The violations must be committed against persons taking no active part in the hostilities."

Article 5 of the ICTY Statute grants the Tribunal jurisdiction to prosecute crimes against humanity. The Judgement noted that in addition to the statutory requirement of an armed conflict, the following sub-elements are encompassed by the crime: "(i) There must be an attack. (ii) The acts of the perpetrator must be part of the attack. (iii) The attack must be 'directed against any civilian population'. (iv) The attack must be 'widespread or systematic'. (v) The perpetrator must know of the wider context in which his acts occur and know that his acts are part of the attack." Applying these criteria to Article's 3 and 5 of the Statute, the Tribunal was satisfied that the prerequisite conditions were established in each instance sustaining a guilty verdict.

Rape

The Trial Chamber generally accepted the elements of rape that were promulgated in the ICTY *Furundžija* case, as: "(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person." However, the Trial

Chamber clarified that it understood paragraph (ii) to include factors that would render sexual penetration non-consensual or non-voluntary. The Trial Chamber thus interpreted paragraph (ii) to mean "where such sexual penetration occurs without the consent of the victim." It stressed that such consent must be "given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances." The focus should be on serious violations of sexual autonomy, which occurs when "the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant"; factors such as force, threats, or taking advantage of a person provide evidence that genuine consent is absent. Indeed, the Trial Chamber stated that proof of force, threat of force, or coercion were not elements of rape imposed by international law. The Judgement noted that the relevant factors tend to fall into three categories: "(i) the sexual activity is accompanied by force or threat of force to the victim or a third party; (ii) the sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or (iii) the sexual activity occurs without the consent of the victim." The *mens rea* of rape is the intent to effect the sexual penetration coupled with the knowledge that it occurs without the victim's consent.

Torture

The Trial Chamber concluded that the definitions of torture under international humanitarian law and international human rights law differ somewhat. Under customary international law, the elements of torture in international humanitarian law are: "(i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental. (ii) The act or omission must be intentional. (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person." The Trial Chamber emphasized that international law provides no privilege that would shield state actors or representatives from individual criminal responsibility, and indeed, acting in an official capacity would "constitute an aggravating circumstance" at the sentencing phase due to their abuse of power.

Outrages upon personal dignity

The offense of outrages upon personal dignity is found in Common Article 3(1)(c) to the 1949 Geneva Conventions, which prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment." The scope of this crime was deemed to require: "(i) that the accused intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity, and (ii) that he knew that the act or omission could have that effect." The Trial Chamber rejected any requirement that the suffering would need to be "lasting" or that the accused knew of the actual consequences of his or her act.

Enslavement

This trial represented the first time the Tribunal has had the occasion to consider the law and application of enslavement as a

The evidence established that the accused physically raped and enslaved several women and girls, and had also facilitated rape and sexual slavery perpetrated by others by taking victims to locations where they would be systematically raped or by acts such as loaning, trading, or selling the women to others.

crime against humanity. After reviewing the treatment of enslavement in domestic laws, conventions, and customary international law, the Trial Chamber determined that at the time relevant to the indictment, the crime of enslavement in customary international law consisted of “the exercise of any or all of the powers attaching to the right of ownership over a person.” The *mens rea* is satisfied if such powers are exercised intentionally.

In determining whether enslavement has been established, the Trial Chamber cited a variety of indicators that could be considered, such as control, lack of consent, exploitation, compulsory labor, and the accruing of some gain to the perpetrator. “Sex” and “control of sexuality” were two of the many other factors cited as possible indicators of enslavement. The Trial Chamber opined that “[d]etaining or keeping someone in captivity, without more, would, depending on the circumstances of a case, usually not constitute enslavement.”

Cumulative convictions

This issue concerns whether an accused can be found guilty of more than one offense for the same conduct. The Trial Chamber cited the Appeals Chamber Judgement in the *Čelebići* case, which allowed cumulative convictions for the same conduct provided there are different statutory provisions that have a “materially distinct element not contained in the other,” such that one “requires proof of a fact not required by the other.” Applying this approach to the case at hand, the Trial Chamber found that Article 3 and Article 5 of the Statute have at least one “materially distinct element that does not appear in the other.” It noted that convictions for torture and rape for the same conduct are also permissible as they too have materially distinct elements.

... convictions for torture and rape for the same conduct are also permissible as they too have materially distinct elements.

Verdicts and Sentences

Kunarac was acquitted of responsibility as a superior for crimes committed by persons under his authority because the Trial Chamber concluded that it was not sufficiently proven that “the soldiers who committed the offences in the Indictment were under the effective control of Kunarac at the time they committed the offences.” All convictions were based solely on individual criminal responsibility, crimes that the accused either committed physically or were otherwise responsible for facilitating. Each was acquitted of some charges, usually based on failure of the prosecution to prove the crime or the accused’s responsibility for it beyond a reasonable doubt.

Kunarac was found guilty on 11 counts: three counts of rape as a crime against humanity, four counts of rape as a violation of the laws or customs of war, one count of enslavement as a crime against humanity, one count of torture as a crime against humanity, and two counts of torture as a violation of the laws or customs of war. He received a single sentence of 28 years imprisonment.

Kovač was found guilty on four counts: one count each for rape as a crime against humanity and a violation of the laws or customs of war, enslavement as a crime against humanity, and outrages upon personal dignity as a violation of the laws or customs of war. He was sentenced to 20 years imprisonment.

Vuković was found guilty on four counts: one count each for rape and torture as crimes against humanity and rape and torture as violations of the laws or customs of war. He received a sentence of 12 years imprisonment.

**Kelly D. Askin is the acting executive director of the War Crimes Research Office at the Washington College of Law.*

Kashmir, continued from page 11

than they were in East Timor. India and Pakistan have fought three wars over Kashmir. Both possess, and have tested, nuclear weapons and over 34,000 people have died in Kashmir in the past ten years. Therefore, UN intervention in support of the right to self-determination is justified in Kashmir through the example of East Timor.

Finally, even if these arguments are not sufficient legal justification, the principles now recognized in international law—that massive, systematic human rights violations or a lack of representation within an existing State create a right to secession—support calls for international action in Kashmir. As outlined above, all human rights bodies unequivocally agree that human rights are massively and systematically denied in Indian-held Kashmir and that the Kashmiri people have no recourse within the Indian union for exercising their right of self-determination.

Conclusion

The modern development of the right to self-determination, especially in East Timor, requires the people of Kashmir be allowed to exercise their right to self-determination. Security Council resolutions addressing the scope of the right to self-

determination, in combination with State practice, indicate the right should be implemented through an impartial plebiscite, thereby enabling the Kashmiri people to freely determine their future. Finally, following East Timor’s example, if the parties do not cooperate in creating conditions allowing the Kashmiri people to enjoy the right to self-determination, the threat to international peace caused by the mass violations of human rights in Kashmir provides clear legal justification for international intervention to implement the right. Indeed, until the group right to self-determination, which the Human Rights Commission states is essential to the effective guarantee of individual rights, is realized in Kashmir, it is likely the mass violations of individual rights will continue.

**Amardeep Singh is an LL.M. candidate at the Washington College of Law and associate editor for the Human Rights Brief.*

