

How to combat Genocide, from a survivor of Genocide

By Emily Moskovitch



Thomas Buergenthal

The road from childhood Holocaust survivor to eminent international human rights jurist may not be a common one, but for Justice Thomas Buergenthal of the International Court of Justice, it just made sense. While delivering the Castan Centre's 2009 Annual Lecture as part of the Melbourne Writers Festival, Justice Buergenthal said "if you yourself have been a victim of human rights violations, then you have a much better appreciation of what it is like to be a victim".

Buergenthal delivered the Annual Lecture while visiting Melbourne in August to promote his book, *A Lucky Child*, about his experiences in labour and concentration camps during World War II. Buergenthal was one of three children to survive the death march from Auschwitz at the end of the war, and the title of his book refers to his father's comment that he was lucky to get into Auschwitz: most children were killed before arriving at the camp because they were not able to work.

After the war, Buergenthal was reunited with his mother (his father did not survive Auschwitz), and lived with her in Germany where he attended school alongside many children whose fathers had been Nazis. As a teenager he moved to the United States, where he excelled in law at Harvard and began his rapid rise from academic to human rights expert. Before he was appointed to the ICJ, Buergenthal was a judge on the Inter-American Court of Human Rights, a member of the UN Truth Commission for El Salvador and a member of the UN Human Rights Committee.

In his lecture, Buergenthal grappled with the issue of how the world should respond to Genocide. As one would expect, he focussed strongly on the deterrent potential of international human rights law, calling it a "history in progress". Buergenthal drew a direct line from the foundation of the UN in 1945, through the ad hoc criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia, to the establishment of the International

Criminal Court in 2002. According to Buergenthal, the UN Charter and 1948's *Universal Declaration on Human Rights* were the catalysts for the slow creation of an international human rights culture, which in turn led to the international community shunning pariah states and pursuing the perpetrators of grave atrocities, particularly through international tribunals and courts. Buergenthal believes that tribunals can have a deterrent effect, not only because alleged perpetrators are eventually put on trial, but also because the issuing of indictments prevents them from travelling abroad freely, for fear of arrest: they are prisoners even when they are free.

Buergenthal also credited the European, US and African regional human rights courts and tribunals with creating culture-specific human rights institutions which socialise governments into compliance with international human rights obligations and "give hope that human rights protection will be possible". In answer to a question from the audience, Buergenthal confirmed his strong support for a similar mechanism for the Asia-Pacific.

Buergenthal did acknowledge that the world should not be fooled into thinking that the current system is fully protective and well-functioning. Although it has saved lives and increased the pressure on governments to take their obligations more seriously, Buergenthal strongly believes we still live in a "world-wide movement of human beings yearning to be treated with dignity".

On a more personal note, Buergenthal described the difficulty he has experienced in bending the perception that victims of human rights violations apply the law in a manner whereby the "victim always wins". Buergenthal depicted judicial impartiality as a primary aspect of any judicial office but confirmed that not all victims of gross violations could or should be asked to recuse themselves on this basis alone. In his book Buergenthal comments on his childhood experiences saying they "equipped me to be a better human rights lawyer, if only because I understood, not only intellectually but also emotionally, what it is like to be a victim...I could, after all, feel it in my bones". On the night, Buergenthal demonstrated to the audience of more than 500 that he possesses the necessary mix of empathy and impartiality.

The Castan Centre 2009 Annual Lecture was sponsored by Holding Redlich as part of the Melbourne Writers Festival.

