

GENOCIDE

Never Again?

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Seemingly invisible to most people, the world has been awash with strife. Between twenty-one million and thirty-one million people have been killed in 137 wars world-wide since the end of World War II. More than fifty-million people have been forced away from their homelands to become "dislocated persons" or "documented refugees". Fifty-three of these wars are still seething and many tens of millions of people continue to be forcibly separated from their homelands. In the face of this contemporary global carnage, not a single person or group of persons has been indicted or prosecuted for committing a "War Crime" or the crime of genocide. Can it be that despite an annual average of 750,000 deaths (due to state and national conflicts) each year for the last forty-one years that all parties to conflicts are carefully abiding by the Geneva Conventions and the Genocide Convention?

The Second World War produced many trials of individuals charged with committing *war crimes*. The Tokyo Tribunal and the Nuremberg Tribunal set the precedent. After four decades, many former nazis are still being prosecuted for their unspeakable acts. But, not since the War Crimes Trials of the late 1940s has a state or collection of states convened a court to hear charges of war crimes or genocide committed after World War II. Despite ratification of the *Convention on the Prevention and Punishment of the Crime of Genocide* by ninety-six states since the United Nations

General Assembly adopted it in 1948 none of its provisions have been invoked for alleged or proven acts of genocide. This striking fact remains unaltered despite the numerous wars, "police actions", insurrections and "conflicts" to which states have been a party.

No Crimes During World War III

That the Genocide Convention has not been invoked is even more shocking since the facts of genocidal crimes are extensively documented. The public press, many non-governmental organizations like the Anti-Slavery Society in England, and multi-lateral state government organizations like the United Nations and the Organization of American States have either reported or received documentary evidence concerning the deliberate destruction in whole or in part of nations, ethnic groups, racial groups and religious groups since 1945. The United Nations Working Group on Indigenous Populations received three days of testimony from representatives of victim nations in July 1985. As recently as February of 1986 the United Nations Commission on Human Rights heard witnesses present detailed testimony describing numerous incidents of genocidal crimes. Evidence continues to be assembled.

All through the 1950s and early 1960s the United States Government undertook a program to "liquidate" Indian reservations and remove their populations to urban centers thus dislocating half of the populations of Indian Nations within U.S. boundaries.

The Ethiopian Government has carried out systematic threats against the peoples of Eritrea and Tigre since the late 1950s resulting in thousands of deaths and over a million refugees.

Indonesia's Government has directed an invasion and the ruthless destruction of the people of East Timor, West Papua and South Molucca since the late 1960s. The Timorese people have seen one-third of their population exterminated while the West Papuans have lost nearly a quarter of their population.

The Nigerian Government engaged in a war of extermination against the Igbo as they sought to establish the independent state of Biafra in the early 1970s. The calculated and systematic killing of Igbo was carried out in the total light of public awareness.

The Ugandan Government used its armies to kill thousands of tribesmen throughout the state of Uganda over a period of three years with the complete knowledge of every state that ratified the Genocide Convention.

El Salvador and rebel forces challenging that government's authority have been responsible for the deaths of more than 30,000 Pipil Indians (nearly ten percent of that nation's population) since 1979. The Guatemalan government has been directly responsible for the dislocation of more than one million Mayan Indians, the destruction of scores of Indian villages and the killing of more than 100,000 Mayans since 1970. And the Nicaraguan government has destroyed nearly half of the Miskito, Sumo and Rama villages along the Atlantic coast of that country since 1981 while forcing massive relocations of over half of the Indian people.

The Union of Soviet Socialist Republics has conducted the systematic slaughter of the Koochis and other nations in Afghanistan since its invasion of that

land resulting in millions of refugees, destruction of a multitude of hamlets, towns and villages; and the killing of thousands of men, women and children. The peoples of these nations represent no direct military threat to the Soviet Union. Yet they are the targets of intense violence exercised by the Soviet military.

The Bangladesh Government has killed more than 200,000 Chakma and members of other tribes in the Chittagong Hill Tracts Region in the southeast part of that country. Massive forced relocations, the burning of scores of villages and confiscation of lands have been the practice of this government since 1971. As recently as the period from April through May 1986 the Jana Samhati Samiti (United Peoples Party of the Chittagong Hill Tracts) which represents the nations of the Chittagong Hill Tracts issued one in a series of reports listing *Atrocities committed on the innocent tribal people of Chittagong Hill Tracts* by the Bangladesh government. The Jana Samhati Samiti lists in its current report 215 cases of *genocidal violence* being committed by the Bangladeshi regime.

The Cambodian government massacred more than two million people during the short life of the Pol Pot junta in the early 1980s. The dry bones of this regime's victims were found and publicly displayed for the world to see in numerous private and public reports. Millions of people from throughout Cambodia have been dislocated and remain in constant threat of their lives.

How can it be that in the light of all these and many more occurrences of the criminal destruction of peoples no court has been convened to consider charges of *crimes against humanity*?

Where is the global conscience in the face of this wanton slaughter? Are these not a part of the same *odious scourge* which gave rise to the call to punish nazis for the crime of genocide? Are these not acts of genocide?

All the conflicts combined over four decades add up to a **Third World War**. With the involvement of so many states and so many nations in anarchic butchery, no other conclusion can be drawn. Yet, despite the intensity of the global bloodbath, barely a whimper has been heard of the crimes being committed from states which ratified the Genocide Convention.

War Crimes on Trial

The first internationally sanctioned tribunals to prosecute individuals for the commission of the crime of *genocide* were initiated at the close of the 1940s. Flawed as they were, these tribunals did produce principles to guide future trials. Most notable were these principles from the Nuremberg trials:

Principle II. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle IV. The fact that a person acted pursuant to order of his (sic) **Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.**

Principle VI. War Crimes: . . . wanton
destruction of cities, towns or villages

The victors of World War II chose to ignore the commission of *war crimes* by the countries acting under the Allied Powers banner. The Soviet government's persecution of Gypsies, Jews, Lithuanians, Turkmen, Usbiks, Croatians and Armenians was ignored; along with their enforced placement of hundreds of thousands in concentration camps and denial of food to hundreds of thousands more. The United States was forgiven its willingness to kill tens of thousands with two atomic bombs at Hiroshima and Nagasaki. Even the destruction of Dresden and Hamburg (where forty-thousand souls died in two hours) as a result of fire-storms induced by intensive Allied bombing were reduced to "unfortunate results of war" and ignored. The allied victors were justified in their "acts of war" while only some of the defeated were punished for what would be later referred to as a *crime against humanity*.

When all was said and done, only the leaders of Jewish organizations and later the government of the new state of Israel would say about the crimes committed during World War II, "Never Again!" Such crimes against human beings would be forever in the future exposed and responsible parties punished.

A monument to this passionate plea became known as the **United Nations Convention on the Prevention and Punishment of the Crime of Genocide** — a testament to the collective conscience of humanity.

United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1951)

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required:

Hereby agree as hereinafter provided.

Article I. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to

another group;

Article III. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV. Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V. The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI. Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII. Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as

they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX. Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X. The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall bear the date of 9 December 1948.

(Articles XI through XIX contain technical provisions for the coming into force of the Convention, amendments, and denunciations.)

Officially Invisible Crimes

Despite ratification of the Convention by 96 states most sought to circumscribe the already restricted international agreement by attaching more restrictions in the form of *reservations* and *understandings*. Upon ratification, many states simply held back agreeing to the application of certain provisions of the Convention under circumstances affecting them. As a consequence individual state interpretations of the agreement have further eroded the universal application of concepts aimed at preventing and punishing the crime of genocide.

Though the Convention is broadly interpreted outside of state government circles to deter genocide by forcing states to punish those who commit the crime

little evidence exists to suggest the success of deterrence. And, even though the Convention is supposed to affirm that genocide is not to be considered an internal matter of a state, but a crime under international law most states insist that otherwise citable offenses are *internal*. Many ratifying states moved to protect themselves from possible charges under the Convention by restricting the use of the International Court of Justice. They further restricted the application of Convention provisions by limiting the definitions of terms to specific circumstances.

A classic example of state incertitude regarding the Genocide Convention is the drawn-out ratification processing conducted by the government of the United States of America. Notwithstanding the leading role played by representatives of the United States government in the Convention's drafting between 1946 and 1948, and President Harry S. Truman's subsequent submission of the UN adopted treaty to the US Senate for final ratification in 1949 the US government was not among the first twenty states to ratify the treaty.

The United States of America remains, after thirty-eight years, among a few original signing states which have not finally ratified the treaty. Indeed, the Convention was not even officially considered by the US Senate until February 19, 1986 when it was finally agreed to by a vote of 83 to 11 (and six not voting) with certain *reservations* and *understandings*. The Union of Soviet Socialist Republics gave its approval in 1950 and France ratified the Convention in 1954. One of the late-comers was the United Kingdom which ratified the treaty in 1970.

After ratifying the Convention, the US Senate was

still not willing to commit the United States of America to its provisions. Before the Convention can be applied to the US new domestic legislation must first be enacted making genocide a crime applicable to US citizens, thus casting more doubt and delay.

The United States indicated its agreement subject to its reservation about the applicability of Article IX of the Convention. In its *Resolution of Ratification* the US Senate declared: . . . *before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.* By inserting this reservation, the United States of America will join twenty-three other ratifying states which deny World Court jurisdiction on questions involving genocidal crimes. States denying World Court Jurisdiction include:

Albania	Algeria
Argentina	Bulgaria
Byelorussian SSR	People's Rep. of China
Czechoslovakia	German Democ. Rep.
Hungary	India
Mongolia	Morocco
Philippines	Poland
Romania	Ruwanda
Spain	Ukrainian SSR
U.S.S.R	Venezuela
Vietnam	

Senator John Kerry of Massachusetts charged that to deny World Court jurisdiction would *weakened* the Genocide Convention *for reasons of ideology and politics, and not for any reasons of good policy.* Arguing against US reservations Kerry suggested that the United States

had allied itself with both communist and authoritarian states which might not want the World Court to exercise jurisdiction over their actions. (Congressional Record:S1364) The Netherlands, Australia, Belgium, Brazil, Ecuador, Greece, Norway and the United Kingdom have all rejected reservations which limit World Court jurisdiction. The Netherlands in particular does not recognize as valid any state's ratification which seeks to deny the World Court's jurisdiction over the genocide treaty.

While states make the *symbolic gesture* of ratifying the Genocide Convention so as to avoid criticism from other states or to promote propaganda regarding their *commitment to human rights* nations, political groups, religious groups, ethnic groups and racial minorities are being exterminated.

Nations Must Act

In the rush to usher in an international law which condemned the horrors of nazi war crimes and to formulate a *rule of law* aimed at the prevention and punishment of the crime of genocide no effort was made to create a permanent forum for the rendering of judgments. Indeed, as we have seen, where the International Court of Justice might be invoked now twenty-four of the ratifying states have chosen to deny that institution's jurisdiction.

How is the crime of genocide to be prevented? How are persons to be punished? Under the Genocide Convention no permanent tribunal was established to enforce the law. What had begun as an affirmative effort to eliminate the *odious scourge* of genocide has become a justification for inaction and a protective veil

behind which practitioners of genocide can hide. There appears to be no recourse available to the victims of genocide but to institute a tribunal themselves for the purpose of bringing to trial those individuals who have been charged with the crime of genocide.

In accordance with the *law of nations*, said to be the basis for the Convention on the Prevention and Punishment of the Crime of Genocide: It is the natural right for any people to defend themselves and to prosecute those who would commit crimes against them. Many of the victims of genocide are indigenous nations like the Papua, Maya, Chakma, Pipil, and the Kurds. All though there are only 168 states in the world, there are more than three thousand nations which as much as states have the duty to eliminate genocide. Indigenous nations have the capacity to convene an international tribunal concerned with the prosecution of crimes of genocide. The Sami Nation in northern Europe, Haudenosaunee and Shuswap in North America, Zulu and Xhosa Nations of southern Africa and the Maori of New Zealand are logical conveners of a permanent international tribunal on genocide. Of course, many other nations could convene a permanent tribunal as well.

Just as it had been shown to be true at the end of World War II that when *one is at risk, all are at risk* the last forty-one years have continued to demonstrate this axiom. Just as the victims called attention to the crimes of genocide more than a generation ago, so the contemporary victims must take the next step to prevent and punish the purveyors and practitioners of slaughter.

When it was said that the crime of genocide

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would *Never Again* be permitted or allowed to go unpunished something got lost. Many placed their faith in the will and power of so called civilized states. That faith was apparently misplaced as the killing of millions and the displacement of millions more during the last forty years would seem to testify. The first nations of the world, founders of the law of nations, and the frequent victims must now take action to defend themselves. Who else will ensure that genocide is punished and permitted *Never Again*?

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